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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Special Rapporteur on the independence of judges and lawyers, Dato'Param Cumaraswamy, submitted pursuant to Commission on Human Rights resolution 1995/36

* In view of its length, the present document is being issued in the original language only, the Conference Services Division of the United Nations Office at Geneva having insufficient capacity to translate documents that greatly exceed the 32-page limit recommended by the General Assembly (see Commission resolution 1993/94, para. 1).

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INTRODUCTION

1. The present report is submitted pursuant to Commission on Human Rights resolution 1995/31 of 3 March 1995. This report is the second presented to the Commission on Human Rights by Dato'Param Cumaraswamy since the mandate was established by the Commission in its resolution 1994/41 of 4 March 1994 and endorsed by the Economic and Social Council in its decision 1994/251 of 22 July 1994.

2. Chapter I of the present report contains the terms of reference for the discharge of the mandate in conformity with the aforementioned resolution and for requests made to the Special Rapporteur by the Commission on Human Rights in other resolutions. Chapter II briefly refers to the methods of work applied by the Special Rapporteur in the discharge of the mandate. In chapter III, the Special Rapporteur presents an account of activities he has undertaken during the past year. Chapter IV provides a brief discussion on various theoretical issues that the Special Rapporteur considers to be of particular importance for the development of an independent judiciary. Chapter V contains an analysis of information received concerning attacks on the judiciary, a summary of the allegations transmitted to Governments, information received from Governments in response to his initial communication transmitted in October 1994 and in response to the allegations transmitted as well as follow-up with authorities and sources, and, where appropriate, specific comments, conclusions and observations. Chapter VI contains a summary of the Special Rapporteur's communications with other international organizations, particularly the World Bank, and with the Council of Europe. Finally, in chapter VI, the Special Rapporteur sets out future activities that he intends to undertake and his conclusions.

3. The appendix contains a list of the Governments, courts and judges, ombudsmen, universities, Bar Associations, and Association of Lawyers that have replied to the initial communication transmitted by the Special Rapporteur in October and November 1994 requesting information relevant to his mandate.

I. TERMS OF REFERENCE

4. At its fiftieth session, the Commission on Human Rights, in resolution 1994/41, noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights, requested the Chairman of the Commission to appoint, for a period of three years, a special rapporteur whose mandate would consist of the following tasks: (a) to inquire into any substantial allegations transmitted to him and to report his conclusions thereon; (b) to identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make concrete recommendations including the provision of advisory services or technical assistance when they were requested by the State concerned; and (c) to study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

5. Several resolutions adopted by the Commission on Human Rights at its fifty-first session are also pertinent to the mandate of the Special Rapporteur and have been taken into consideration in examining and analysing the information brought to his attention with regard to the different countries. These resolutions are, in particular:

(a) Resolution 1995/24, entitled "Rights of persons belonging to national or ethnic, religious and linguistic minorities", in which the Commission urged the special rapporteurs to continue to give due regard, within their respective mandates, to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

(b) Resolution 1995/40, on the promotion of the right to freedom of opinion and expression, in which the Commission invited the special rapporteurs to pay attention to the situation of persons detained, subjected to violence, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression;

(c) Resolution 1995/41, entitled "Human rights and the administration of justice, in particular of children and juveniles in detention", in which the Commission called upon the special rapporteurs to continue to provide, wherever appropriate, specific recommendations relating to the effective protection of human rights in the administration of justice;

(d) Resolution 1995/43, entitled "Human rights and terrorism", in which the Commission urged all thematic special rapporteurs to address as appropriate the consequences of the acts, methods and practices of terrorist groups in their reports to the Commission;

(e) Resolution 1995/53, entitled "Advisory services and the Voluntary Fund for Technical Cooperation in the Field of Human Rights", in which the Commission invited the special rapporteurs to continue to include in their recommendations, whenever appropriate, proposals for specific projects to be realized under the programme of advisory services;

(f) Resolution 1995/75, entitled "Cooperation with representatives of United Nations human rights bodies", in which the Commission requested all representatives of human rights bodies to continue to take urgent steps, in conformity with their mandates, to help prevent the hampering of access to United Nations human rights procedures in any way and to help prevent the occurrence of intimidation and reprisals against persons who seek to cooperate or have cooperated with United Nations human rights procedures, as well as relatives of victims of human rights violations, and to continue to include in their reports to the Commission on Human Rights a reference to allegations of intimidation or reprisal and of hampering of access to United Nations human rights procedures, as well as an account of action taken by them in that regard;

(g) Resolution 1995/79, entitled "Rights of the Child", in which the Commission recommended that special rapporteurs pay special attention to particular situations in which children were in danger;

(h) Resolution 1995/80, entitled "Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action", in which the Commission called upon all special rapporteurs to take fully into account the recommendations contained in the Vienna Declaration and Programme of Action within their respective mandates;

(i) Resolution 1995/85, entitled "The elimination of violence against women", in which the Commission requested other special rapporteurs to cooperate with and assist the Special Rapporteur on violence against women in the performance of the tasks and duties mandated, and in particular to respond to requests for information on violence against women, its causes and its consequences;

(j) Resolution 1995/86, entitled "Question of integrating the human rights of women into the human rights mechanisms of the United Nations", in which the Commission requested special rapporteurs regularly and systematically to include in their reports information on violations of the human rights of women;

(k) Resolution 1995/87, entitled "Human rights and thematic procedures", in which the Commission requested the thematic special rapporteurs to include in their reports comments on problems of responsiveness and the result of analyses, as appropriate, in order to carry out their mandates even more effectively, and to include also in their reports suggestions as to areas where Governments might request relevant assistance through the programme of advisory services administered by the Centre for Human Rights. The Commission also called on the special rapporteurs to include in their reports gender-disaggregated data and to address the characteristics and practice of human rights violations that were specifically or primarily directed against women, or to which women were particularly vulnerable.

II. METHODS OF WORK

6. The Special Rapporteur has followed the methods of work described in the first report of his tenure (see E/CN.4/1995/39, paras. 63-93) and approved by the Commission on Human Rights in its resolution 1994/41.

7. Seeking to avoid unnecessary duplication of the activities of the thematic mechanisms (see E/CN.4/1995/34, paras. 8 and 9), either among thematic rapporteurs or with country rapporteurs, the Special Rapporteur has been involved in several cooperative initiatives. During the past year the Special Rapporteur has joined with other Special Rapporteurs and Working Groups to transmit urgent appeals on behalf of individuals (see below, appeals to China, para. 133; Nigeria (2), paras. 183, 187; Uzbekistan, para. 241). Further, the Special Rapporteur and the Special Rapporteur on extrajudicial summary or arbitrary executions, the Special Rapporteur on the question of torture and the Chairman of the Working Group on Enforced or Involuntary Disappearances transmitted an urgent appeal to the Government of Peru in which they expressed their concern at the promulgation of amnesty laws.

III. ACTIVITIES OF THE SPECIAL RAPPORTEUR

8. The following sections give an account of the activities carried out by the Special Rapporteur in the implementation of the mandate entrusted to him by the Commission on Human Rights.

A. Consultations

9. The Special Rapporteur visited Geneva for his first round of consultations from 5 to 11 February 1995 in order to present his report to the fifty-first session of the Commission on Human Rights. He also took this occasion to hold an open meeting with all interested non-governmental organizations. The meeting provided an opportunity for the Special Rapporteur to establish a meaningful and useful dialogue with the NGO community and he hopes to continue this dialogue at future sessions of the Commission. During this round of consultations, the Special Rapporteur also held meetings with representatives from the Permanent Missions of the United States of America and Canada to discuss issues relevant to his mandate.

10. Within the framework of related activities of the Commission on Human Rights, the Special Rapporteur participated in the second meeting of special rapporteurs, special representatives and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, which took place from 29 to 31 May 1995. The Special Rapporteur also held his second round of consultations at this time during which he held a meeting with officials from the Office of the United Nations High Commissioner for Refugees in connection with his proposed mission to the Central Asian Republics.

11. The Special Rapporteur visited Geneva for his third round of consultations from 20 to 24 November 1995 in order to hold consultations with the Secretariat and with the High Commissioner for Human Rights. During this period, the Special Rapporteur also attended a meeting of the Working Group on Arbitrary Detention during which there was an interesting exchange of opinions with the members of the Working Group on various issues of concern to each mandate. The Special Rapporteur took also this occasion to meet with the Chief of the Advisory Services, Technical Cooperation and Information Branch and with the Human Rights Officer responsible for the drafting of a manual to be used to train judges and lawyers, and for coordinating programmes organized by the Centre for Human Rights. In this meeting the Special Rapporteur discussed the need for cooperation between himself and the branch with a view to enhancing training programmes for judges and lawyers. The Special Rapporteur also met with the Chargé d'affaires of the Permanent Mission of Albania to the United Nations Office at Geneva, the Ambassador of Colombia, the Chargé d'affaires of the Permanent Mission of Nigeria (in which Mr. Bacre Ndiaye, the Special Rapporteur on extrajudicial, summary or arbitrary executions also participated) and a representative from the Permanent Mission of Pakistan to discuss issues of concern to the Special Rapporteur in their respective countries and, in the case of Colombia, Nigeria and Pakistan, to discuss the possibility of undertaking a mission to visit those countries.

B. Visits

12. The Special Rapporteur attended an international conference on "The Mason Court and Beyond" in Melbourne, Australia from 8 to 10 September 1995. This conference was to commemorate the retirement of Sir Anthony Mason as Chief Justice of the High Court of Australia. The Special Rapporteur, at the conclusion of the conference, addressed participants on juridical independence/the concerns of the United Nations for the independence of judges and lawyers.

13. On 14 July 1995, the Special Rapporteur, while on a private visit to the United Kingdom, visited Belfast for a preliminary investigation into allegations he had received about executive interference into the administration of justice in Northern Ireland. During the visit he held meetings with representatives of NGOs and, in particular, the Committee on the Administration of Justice.

14. The Special Rapporteur, while on a private visit to Australia, visited Melbourne to meet the Attorney General with regard to allegations of interference into the independence of the legal profession in the State of Victoria by way of reforms under which a new licensing system will be created.

C. Communications with Governments

15. During the period under review, the Special Rapporteur transmitted 20 urgent appeals to the following 12 Governments: Albania; Cambodia; Colombia; China (joint appeal); Egypt; Haiti (joint appeal); Hong Kong; Mexico (2); Namibia; Nigeria (1 urgent appeal and 3 joint appeals); Peru (4 urgent appeals and 1 joint appeal); Uzbekistan. The Special Rapporteur transmitted eight communications to the following seven Governments: Argentina; Egypt (2); Nigeria; Peru; Sudan; Zaire; Yemen. He also transmitted two communications to State governments in Australia.

16. The Special Rapporteur has sought from the Governments of the Central Asian Republics (Kazakstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan) permission to undertake missions to those countries. To date, the Government of Kazakstan has replied positively and responses from the other Governments are awaited.

D. Communications with intergovernmental and non-governmental organizations

17. As there are numerous intergovernmental and non-governmental organizations involved in carrying out training programmes for judges and lawyers, the Special Rapporteur has made every effort to establish a dialogue with those organizations and to seek their cooperation. The following section contains a brief summary of the exchanges the Special Rapporteur has had with these organizations.

1. Council of Europe

18. On 18 November 1994, the Special Rapporteur received a letter from the Council of Europe in reply to the Special Rapporteur's communication sent to the Secretary-General of the Council of Europe concerning the

independence of the judiciary. This communication included the text of Recommendation No. R (94) 12 of the Committee of Ministers on independence, efficiency and role of judges, which was adopted by the Committee on 13 October 1994. The Committee of Ministers recommended that States adopt or reinforce all measures necessary to promote the role of individual judges and the judiciary as a whole and strengthen their independence and efficiency by implementing, in particular, six principles.

19. Principle I contains general principles on the independence of judges, which are as follows:

> "1. All necessary measures should be taken to respect, protect and promote the independence of judges.
>
> "2. In particular, the following measures should be taken:
>
> "a. The independence of judges should be guaranteed pursuant to the provisions of the Convention and the constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law. Subject to the legal tradition of each State, such rules may provide, for instance, the following:
>
> "i. decisions of judges should not be subject to any revision outside any appeals procedures as provided by law;
>
> "ii. the terms of office of judges and their remuneration should be guaranteed by law;
>
> "iii. no organ other than the courts themselves should decide on its own competence, as defined by law;
>
> "iv. with the exception of decisions on amnesty, pardon or similar, the Government or the administration should not be able to take any decision which invalidates judicial decisions retroactively;
>
> "b. The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.
>
> "c. All decisions concerning the professional careers of judges should be based on objective criteria and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of government and administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.

However, where the constitutional or legal provisions and traditions allow judges to be appointed by government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria mentioned above. These guarantees could be, for example, one or more of the following:

"i. a special independent and competent body to give the Government advice which it follows in practice; or

"ii. the right for an individual to appeal against a decision to an independent authority; or

"iii. the authority which makes the decision safeguards against undue or improper influences.

"d. In the decision-making process, judges should be independent and be able to act without any restrictions, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.

"e. The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing lots or a system for automatic distribution according to alphabetical order or some similar system.

"f. A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the Government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.

"3. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists."

20. Principle II, which concerns the authority of judges, reads as follows:

"1. All persons connected with a case, including State bodies or their representatives, should be subject to the authority of the judge.

"2. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court."

21. Principle III, which deals with proper working conditions of judges, reads as follows:

"1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:

"a. recruiting a sufficient number of judges and providing for appropriate training such as practical training in the courts and, where possible, with other authorities and bodies, before appointment and during their career. Such training should be free of charge to the judge and should in particular concern recent legislation and case-law. Where appropriate, the training should include study visits to European and foreign authorities as well as courts;

"b. ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities;

"c. providing a clear structure in order to recruit and retain able judges;

"d. providing adequate support staff and equipment, in particular office automation and data-processing facilities, to ensure that judges can act efficiently and without undue delay;

"e. taking appropriate measures to assign non-judicial tasks to other persons, in conformity with Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts.

"2. All necessary measures should be taken to ensure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges who may become or are victims of serious threats."

22. Principle IV, which deals with associations of judges, reads as follows:

"Judges should be free to form associations which, either alone or with another body, have the task of safeguarding their independence and protect their interests."

23. Principle V, which deals with judicial responsibilities, reads as follows:

"1. In proceedings, judges have the duty to protect the rights and freedoms of all persons.

"2. Judges have the duty and should be given the power to exercise their judicial responsibilities to ensure that the law is properly applied and cases are dealt with fairly, efficiently and speedily.

"3. Judges should in particular have the following responsibilities:

"a. to act independently in all cases and free from any outside influence;

"b. to conduct cases in an impartial manner in accordance with their assessment of the facts and their understanding of the law, to ensure that a fair hearing is given to all parties and that the procedural rights of the parties are respected pursuant to the provisions of the Convention [for the Protection of Human Rights and Fundamental Freedoms];

"c. to withdraw from a case or decline to act where there are valid reasons, and not otherwise. Such reasons should be defined by law and may, for instance, relate to serious health problems, conflicts of interest or the interests of justice;

"d. where necessary, to explain in an impartial manner procedural matters to parties;

"e. where appropriate, to encourage the parties to reach a friendly settlement;

"f. except where the law or established practice otherwise provides, to give clear and complete reasons for their judgments, using language which is readily understandable;

"g. to undergo any necessary training in order to carry out their duties in an efficient and proper manner."

24. Principle VI, which deals with failure to carry out responsibilities and disciplinary offences, reads as follows:

"1. Where judges fail to carry out their duties in an efficient and proper manner or in the event of disciplinary offences, all necessary measures which do not prejudice judicial independence should be taken. Depending on the constitutional principles and the legal provisions and traditions of each State, such measures may include, for instance:

"a. withdrawal of cases from the judge;

"b. moving the judge to other judicial tasks within the court;

"c. economic sanctions such as a reduction in salary for a temporary period;

"d. suspension.

"2. Appointed judges may not be permanently removed from office without valid reasons until mandatory retirement. Such reasons, which should be defined in precise terms by the law, could apply in countries where the judge is elected for a certain period, or may relate to incapacity to perform judicial functions, commission of criminal offences or serious infringements of disciplinary rules.

"3. Where disciplinary measures under paragraphs 1 and 2 of this article need to be taken, States should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself. The law should provide for appropriate procedures to ensure that judges in question are given at least all the due process requirements of the Convention, for instance that the case should be heard within a reasonable time and that they should have the right to answer any charges."

25. On 5 January 1995 the Special Rapporteur received a communication from the Council of Europe in response to his letter of 12 December 1994 in which he asked the Council of Europe to provide him with information on training programmes for judges undertaken by the Council in different countries of the region, in particular those of the Central Asian Republics. The Council of Europe attached to its communication a copy of its 1993 annual report concerning its cooperation and assistance programmes with Central and Eastern European countries, including some general information concerning the contents of the programme and some information about cooperation with the countries which are of particular interest to the Special Rapporteur. The report notes that the Council of Europe has cooperated actively with other international institutions involved in providing assistance to democratic reforms, in particular the European Union. Also, the Council of Europe and the European Commission have signed agreements for the implementation of joint programmes of cooperation in Albania for the promotion of human rights and the rule of law, and in the Baltic countries for legal reform and democracy. Finally, the Council of Europe and the Commission, in its capacity of coordinator of the Group of 24 Governments providing funds for development assistance (G-24), organized in Strasbourg, on 6 and 7 December 1993, a conference on democratic institution-building.

26. In its communication, the Council stated that the cooperation with the five Central Asian Republics, (Kazakstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) that the Special Rapporteur mentioned in his letter is less developed than with the 17 countries where the Council of Europe is currently operating on a regular basis and which are either members of the Council of Europe or have applied for membership. It also indicated that if the Council of Europe were to receive a request for technical cooperation and assistance

from other countries, it was likely that the Council would respond to them within the available budgetary means following decisions on a case-by-case basis by the Committee of Ministers.

27. The Special Rapporteur also received information about the Council's "Themis Plan", which offers members of the legal professions a training programme in the relevant fields based on the principles of the rule of law and respect for human rights. The objective of this plan is to ensure that the legislative reforms in the new democracies are genuinely implemented as intended by the legislators.

28. The Council also submitted additional reports for the Special Rapporteur's consideration, including documents relating to the Themis programmes for the development of law, the role of the judicial service commission, the role of the judge in a democratic society, the implementation of activities in 1994, and the Pan-European conference on the transformation of the procuratora into a body compatible with the democratic principles of law.

29. The Special Rapporteur welcomes these developments which provide guidelines for implementing at the domestic level the Basic Principles on the Independence of the Judiciary. As a follow-up, the Special Rapporteur is inquiring into the number of countries in the European Union which have adopted and implemented these guidelines.

30. The communication of 18 November 1994 from the Council of Europe also indicated that since 1990 the Council of Europe has been engaged in a number of projects in Central and Eastern Europe aimed at strengthening the independence and impartiality of the judiciary. This communication also drew the attention of the Special Rapporteur to the jurisprudence of the European Court and Commission on Human Rights under article 6 of the European Convention.

2. Inter-Parliamentary Union

31. On 28 October 1994, the Special Rapporteur received a communication from the Secretary-General of the Inter-Parliamentary Union in reply to his initial request for the cooperation of the Inter-Parliamentary Union with regard to his mandate.

32. The Secretary-General indicated that the IPU, as the world organization of national parliaments, does not pursue a particular cause like many non-governmental organizations but rather endeavours, according to its statutes, to contribute to the defence and the promotion of human rights in general. This is done, first of all, on a political level within the framework of the Inter-Parliamentary Conferences, which in the past years have adopted several resolutions on human rights topics, most recently on strengthening national structures, institutions and organizations of society which play a role in promoting and safeguarding human rights and international cooperation and national action to support social and economic development and efforts to combat poverty (Copenhagen, September 1994). In May 1993, a symposium entitled "Parliament: Guardian of Human Rights" discussed the

specific role of parliamentarians with regard to the protection and promotion of human rights. The question of the independence of the judiciary as such was not addressed on these occasions.

33. However, the Secretary-General did indicate that questions relating to the concept of the independence of the judiciary, its meaning and consequences come up from time to time within the Union's work for the human rights of members of parliament. He informed the Special Rapporteur that the Inter-Parliamentary Council set up in 1976 a Committee on the Human Rights of Parliamentarians which deals with complaints concerning the violation of the human rights of parliamentarians. He also attached a copy of a brochure on the Committee's function. The Committee brings the allegations submitted to it to the attention of the parliamentary authority of the country concerned and requests their observations thereon. All too often, the authorities, referring to the separation of powers and the independence of the judiciary, refuse to comment on the allegations if they relate to an ongoing trial.

34. Thus, in a recent case where allegations of torture and of violations of the right to a fair trial were raised, the Speaker of the relevant national parliament stated, inter alia, that the principle of separation of powers barred the legislature and the judiciary from querying, criticizing and interfering in the affairs, processes and activities of each other and that it was therefore not possible for him to provide any information on the ongoing trial. In the confidential decision adopted by the Committee in this case, it considered that an "MP must be entitled to enquire into reported human rights violations, including those relating to the lack of independence of the Judiciary, wherever they occur and especially in their own countries"; it considered therefore that "the separation of powers cannot be construed as preventing Parliamentarians from concerning themselves with human rights violations in their countries and elsewhere". The Committee continued by stating that "the independence of the Judiciary aims essentially at protecting the Court from interference by the Executive and that MPs' concern for human rights and relevant inquiries may in this regard be essential to safeguarding the independence of the Judiciary and hence the principle of the separation of powers". The Committee considered finally that "in any case there is a distinction to be drawn between a member raising and debating in the House a matter which is sub judice, and the Speaker of the Assembly inquiring, on behalf of the House, into the situation of one of its members or former members who is on trial". Consequently, the Committee failed to understand how the parliament concerned would be violating the principle of separation of powers when raising questions relating to the trial of one of its former members.

35. The Secretary-General expressed his interest in receiving any observations from the Special Rapporteur on the above-mentioned point, which he considered to be of fundamental importance for parliament's role as guardian of human rights.

36. On 9 January 1995 the Special Rapporteur sent a communication to the Secretary-General of the Inter-Parliamentary Union proposing that he participate in a conference of the Inter-Parliamentary Union in order to address the issue of independent and impartial justice. Specifically, the Special Rapporteur welcomed the opportunity of engaging members of the IPU in

discussion on various aspects of the issue. The Secretary-General was receptive to this proposal, and it is possible that the Special Rapporteur may attend one of the meetings of the IPU during the coming year.

37. The Special Rapporteur indicated that the IPU no doubt appreciated that the independent and impartial administration of justice is necessary to achieve respect for human rights and is vital to the rule of law in a democratic society, which, in turn, is the foundation for peace and security and avoidance of conflict between communities within a State. Its members also appreciate the importance of institutional checks to the potential and real excesses of the executive power. An important means of checking executive excesses and interferences is through the judiciary. Similarly, the judiciary plays an important role in checking legislative excesses by means of judicial review - which is often misunderstood.

3. Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe

38. On 25 January 1995 the Special Rapporteur received a communication from the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) in reply to his initial communication. The OSCE/ODIHR enclosed information concerning the programme of activities of the organization for 1995, which included several seminars on the rule of law, on the changing world of the judge, on the Constitution of Tajikistan etc. In a prior communication dated 1 December 1994, OSCE/ODIHR had informed the Special Rapporteur that it does not monitor allegations of breaches but rather reacts to instructions of investigation given by agreement of the 53 States participating in the OSCE.

4. Inter-American Juridical Committee

39. On 28 November 1994 the Special Rapporteur received a communication from the Vice-Chairman of the Inter-American Juridical Committee (IASC) of the Organization of American States (OAS) and the Committee's Rapporteur on the subject of protection and guarantees for judges and lawyers in the exercise of their functions. He attached for the information of the Special Rapporteur his report to the IAJC on the subject, originally presented in August 1994 and revised in the light of comments by members of the Committee, as well as the text of the most recent resolution of the IACJ, approved unanimously at the August 1994 session of the Committee. The report and resolution are included in the Committee's annual report, which were to be considered by the OAS Committee on Political and Juridical Affairs and ultimately by the OAS General Assembly.

40. In his report, the IACS Rapporteur began by giving some philosophical foundations. These remarks set out the necessity for a legal system to provide for the judicial function, i.e. to provide for a juridical check on the exercise of legislative or executive authority when individual human rights are infringed. There are some factors necessary in order for the judiciary and legal profession to perform these functions on a practical level. The independence of the judiciary is commonly referred to as comprising two basic elements: the collective independence of the judiciary and the independence of individual judges.

41. He considered that central to the concept of institutional independence of the judiciary is the idea that the judiciary not be under the authority of the executive or legislative branches of government and that it continue to be impartial and independent. He also regarded as fundamental for the administration of justice that judges be given administrative independence from the other branches of government. Budgeting and expenditures, appointment and supervision of staff and assignment of caseloads must be within judicial control. This was necessary to prevent the distribution of resources being used to sanction or reward, and to guarantee timely access to the courts. He considered also that the administration of justice required that the jurisdiction of the courts be respected. This included guarantees that judicial authority would not be abrogated.

42. He regarded as an important component of individual independence that a judge should not be considered as a civil servant, but rather as an autonomous officer of the State. The independence of the individual judge comprised two essential elements: substantive independence and personal independence. Substantive independence means that in the making of judicial decisions and exercising other official duties, individual judges are subject to no other authority but the law. Personal independence means that the judicial terms of office and tenure are secure. Personal independence is secured by judicial appointment subject to correct behaviour and terminated only at retirement age, and by safeguarding judicial remuneration. Accordingly, executive control over terms of service of the judges, such as remuneration, pensions or travel allowance, was inconsistent with the concept of judicial independence. Still less acceptable is any executive control over case assignment, court scheduling, or moving judges from one court to another or from one locality to another.

43. Judges thus required security of tenure and guarantees of adequate salary and pensions in order to effectively maintain independence. Similarly, judges require protection against incursion into their personal autonomy, including protection from criticism, civil and criminal immunity, and protection from removal from office.

44. In states of emergencies, ordinary courts should not abdicate their responsibility of testing the legality of a declaration of emergency.

45. He referred also to the independence of the legal profession as essential to the administration of justice. In this regard lawyers should be free to accept any client, and in accordance with the responsibility of the profession should remain free to provide impartial and independent advice, even on matters that are controversial or political in nature.

46. Unfortunately, several countries in the region had recently witnessed a great number of problems and threats to this independence. The most obvious form of executive interference with the judiciary was formal abrogation of judicial authority, often by de facto military regimes. Problems had occurred in Cuba, Uruguay, Ecuador, Argentina, Brazil, El Salvador and Peru.

47. Another problem was maintaining judicial salaries at appropriate levels. The discipline and removal of judges were also great problems. In Chile, Nicaragua and Panama judges had been suspended on political grounds. The

personal security of judges and lawyers had weakened alarmingly in recent years, most seriously in Peru and Colombia, but almost every State in the Americas was facing an increase in threats and harassment of the judiciary.

48. Member States had responded to these threats through constitutional, legal and political measures. Recent constitutional development in for example, Brazil showed a trend to entrench the separation of powers more firmly. Also, a trend towards ensuring constitutional protection of the judiciary's ability to exercise administrative and constitutional review was noticeable. Another development was the annual meeting of the Consejo Judicial Centroamericano (Supreme Court Justices of Guatemala, El Salvador, Honduras and Nicaragua) to review common functional and institutional problems. The most dramatic response to threats to judges had been in Colombia. In 1984 the President placed the country under a state of siege on the ground that the constitutional system was being disrupted. The measures adopted also provided the judges with anonymity, but the threats and violence have continued.

49. The Rapporteur's conclusion was that despite all international attempts to create an independent judiciary, the judiciary continued to be threatened throughout Latin America.

50. On 24 February 1995, the Special Rapporteur sent a communication to the Inter-American Juridical Committee in reply to its letter dated 28 November 1994. The Special Rapporteur thanked it for its report and acknowledged the fact that the independence of the judiciary was seriously threatened in some countries of the Inter-American system, notwithstanding international attempts to enhance judicial independence in the region. The Special Rapporteur furnished a copy of his first report and explained his intentions for fulfilling the tasks his mandate encompassed. In this regard, the Special Rapporteur indicated his intention to promote and protect the independence and impartiality of the judiciary throughout the world to the maximum extent of his abilities. Within the limited resources of the Special Rapporteur, he promised to develop relations with other organizations, institutions and persons with special interest in and knowledge of the judiciary throughout the world to assist him in this task.

51. The Special Rapporteur requested advice as to how he could contribute to the strengthening of the judiciary in the Americas, including an assessment of the priority needs within the Americas. He also requested an opinion concerning seminars and conferences within the Americas in which he might participate or to which he could contribute with a view to creating better awareness of the requirements of judicial independence, and the rule of law and human rights in general.

52. On 3 April 1995, the Special Rapporteur received a reply from the Principal Counsel of the Trade Law Division of the Inter-American Juridical Committee. He noted that the Special Rapporteur's letter raised important questions regarding his role in strengthening the judiciary in the Americas and regarding the ways in which the OAS and United Nations might enhance their cooperation in that regard. He pointed out that these activities were under

the supervision of the Working Group on Enhancement of the Administration of Justice in the Americas of the Committee on Juridical and Political Affairs of the Permanent Council.

53. The Special Rapporteur welcomes this dialogue on the Americas with this important organization.

5. World Bank

54. On 12 December 1994, the Special Rapporteur sent a communication to the Director of Public Sector Management of the World Bank in reply to the latter's communication dated 15 November 1994 in which the Director sent materials concerning a World Bank conference on judicial review in developing countries. The Special Rapporteur expressed his agreement that securing the independence and impartiality of the judiciary was central to achieving the rule of law. The Special Rapporteur was also pleased that this task had become an important dimension of the Bank's strategies for poverty alleviation and was viewed as a necessary condition for sustainable development. The Special Rapporteur considered that from the perspective of the international community, deficiencies in the administration of justice undermined respect for human rights in general and were an obstacle to both social and economic development. The Special Rapporteur considered that successful legal reforms in countries in transition required not only the full conviction and political commitment of the Governments concerned, but also depended upon simple awareness of applicable international standards. The Special Rapporteur noted that the creation of his mandate by the Commission could be viewed as having raised the level of the international community's concern for the independence and impartiality of the judiciary.

55. The Special Rapporteur expressed the view that he must deal with issues relating to securing the administration of justice in a meaningful and concrete way under an independent and impartial judiciary. In this connection, he drew the attention of the Director to what might be called the "capital costs" for the construction of courts, offices, prisons and other elements of the judicial infrastructure necessary to dispense independent and impartial justice. The Special Rapporteur requested information about the extent to which the World Bank had considered such costs, and encouraged such expenditures, within developing countries.

E. Cooperation with other United Nations procedures and bodies

56. It is to be recalled that the Special Rapporteur has a three-pronged mandate which, inter alia, calls upon him to identify and record not only attacks on the independence of the judiciary, lawyers and court officials, but also progress achieved in protecting and enhancing their independence, and to make concrete recommendations including the provision of advisory services or technical assistance when so requested by the State concerned. To this end, the Special Rapporteur held meetings with the Chief of the Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights in an attempt to better coordinate the Special Rapporteur's efforts in this area with the programmes of the Branch. The Special Rapporteur has offered his expertise and expressed his wish to be consulted in the planning and

implementation of programmes for the training of judges and lawyers organized by the Branch and to be informed of the results of training programmes and follow-up undertaken by the Branch.

1. Cooperation with special rapporteurs and working groups of the Commission on Human Rights

57. In addition to the Special Rapporteur's participation in the meeting of special rapporteurs and in joint urgent actions transmitted to Governments, referred to above, the Special Rapporteur requested to undertake a joint mission with the Special Rapporteur on the question of torture, Mr. Nigel Rodley, to Pakistan; a joint mission with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Ndiaye, to Nigeria, and a joint mission with the Working Group on Arbitrary Detention to Peru. The Special Rapporteur must express his disappointment that none of the Governments concerned has responded favourably to these requests. In an oral communication to the Special Rapporteur, a representative of the Permanent Mission of Pakistan to the United Nations Office at Geneva, in rejecting the request for a joint mission, expressed the view that it would be logistically difficult to organize such a mission owing to the fact that the mandates of the respective Special Rapporteurs touched upon distinct and separate issues and therefore would require individual meetings with different government agencies and other organizations. The Governments of Nigeria and Peru had provided no response to the requests by the time the present report was finalized.

58. As noted above, the Special Rapporteur also participated in a meeting of the Working Group on Arbitrary Detention. The Special Rapporteur considers it important to maintain a dialogue with the Working Group, as their respective mandates frequently touch upon the same issues. For example, both the Special Rapporteur and the Working Group have expressed concern about the use of "faceless tribunals" in Peru. Therefore, the Special Rapporteur will maintain and enhance his cooperation with the Working Group on Arbitrary Detention.

2. Cooperation with the Crime Prevention and Criminal Justice Branch

59. As the body that assists the Commission on Crime Prevention and Criminal Justice to oversee the implementation of the Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers, the Special Rapporteur believes it is imperative for him to work in close cooperation with the Crime Prevention and Criminal Justice Branch. To this end, the Special Rapporteur hopes to participate in the forthcoming session of the Commission on Crime Prevention and Criminal Justice to be held in Vienna in May 1996.

3. Cooperation with the Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights

60. The Special Rapporteur welcomes the fact that the Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights offered two training courses for lawyers and judges in 1995. These courses

focused on the following topics: international sources, systems and standards for human rights in the administration of justice; human rights during criminal investigations, arrests and pre-trial detention; the independence of judges and lawyers; the elements of a fair trial; juvenile justice; protection of the rights of women in the administration of justice; human rights under states of emergency; standards for the treatment of prisoners; non-custodial measures; and non-discrimination and equal justice. The first training course was for judges, on human rights in the administration of justice. It was held in Ulaanbaatar in February 1995, part of a continuing multi-component project in Mongolia. The second event was a workshop on international standards for judges, lawyers and prosecutors which took place in Sao Tome and Principe in November 1995.

61. The Special Rapporteur also welcomes efforts by the Branch to develop a manual for a human rights training programme for judges and lawyers. As a part of this effort, the Branch is putting together materials that will be published as a volume in the Centre's Professional Training Series. The manual will be used as the basis for training programmes that will be offered to judges and lawyers at the request of countries through the programme of advisory services and technical assistance carried out by the Centre in the area of human rights in the administration of justice. The manual and related materials will be developed in consultation with the Special Rapporteur and the United Nations Crime Prevention and Criminal Justice Branch. Non-governmental organizations which have done valuable work in this field will be contacted and invited to provide suggestions. The contents will be developed through the training courses for judges and lawyers which are held as part of the ongoing technical cooperation projects of the Centre. In addition, according to the information received, a meeting of experts to review an outline of the manual will be held.

4. Cooperation with the United Nations Interregional Crime and Justice Research Institute

62. On 8 November 1994, the Special Rapporteur received a communication from the United Nations Interregional Crime and Justice Research Institute (UNICRI). This communication indicated that the mandate of the Special Rapporteur is an area in which UNICRI took particular interest. It noted that in September 1989 UNICRI and the Centre for Human Rights jointly organized a training course for Colombian judges on human rights and judicial investigation in Castelgandolfo, Italy, and in December 1991 UNICRI worked with the Centre, the Crime Prevention and Criminal Justice Branch and the Foundation for International Studies of the University of Malta on a training course on human rights and crime prevention in Valletta.

63. UNICRI is also currently working on a project of assistance to Albania in the prevention of crime and the administration of justice, in collaboration with the Italian Superior Council of Judges. An important aspect of this endeavour has been the administration of justice, including the Basic Principles on the Independence of the Judiciary and procedures for their effective implementation.

5. Cooperation with the International Labour Office

64. On 15 November 1994, the Special Rapporteur received a letter from the Legal Adviser of the International Labour Office in reply to his initial communication.

65. The Legal Adviser indicated that several international labour standards were pertinent to the need for an independent and impartial judiciary in the member States of the ILO. He referred in particular to ILO instruments guaranteeing freedom of association. The 1994 General Survey of the Reports on the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention 1949 (No. 98), prepared by the ILO Committee of Experts on the Application of Conventions and Recommendations, illustrates this link. He enclosed copies of paragraphs 32, 77 and 106 of the report. In addition, he indicated that the Termination of Employment Convention, 1982 (No. 158) provides in its article 8, paragraph 1: "A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator." He further indicated that in some countries the labour inspection system included persons who may exercise judicial powers. Where this is the case, the Labour Inspection Convention, 1947 (No. 81) is relevant.

IV. THEORETICAL ISSUES OF SPECIAL IMPORTANCE

A. The use of "faceless" judges in Colombia and Peru

66. In his initial report to the Commission on Human Rights, the Special Rapporteur raised some issues of special importance pursuant to his mandate "to study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers". To this end, the report included a discussion of issues such as separation of powers, the function of judicial review, the media and the judiciary and terrorism and the judiciary. An issue raised in the initial report of the Special Rapporteur was the use of secret witnesses, "faceless" judges and in camera hearing as a measure to combat terrorism. (E/CN.4/1995/39, para. 60). During the past year, the Special Rapporteur continued to receive information on these practices, particularly in Peru and Colombia where there has been extensive use of "faceless" judges and secret witnesses as a means of protecting the judiciary from acts of terrorism. As noted above, this issue is also of particular concern to the Working Group on Arbitrary Detention.

67. Colombia and Peru have in recent times experienced extreme violence resulting from internal disturbances caused by, among other reasons, the confrontation between Government armed forces and irregular armed forces, including terrorist groups and drug traffickers. Targets of this violence have included members of the judiciary. As a response to this situation, both Governments have taken measures to protect the lives and physical integrity of judges and witnesses. Following is a brief description of the measures adopted by the Governments of Colombia and Peru.

1. Colombia

68. On 23 November 1995 the Government of Colombia sent the Special Rapporteur various documents, including materials dealing with what is called "regional justice" or "secret justice".

69. In 1980 the Colombian Government created a system of public order courts, now called courts of regional jurisdiction. The procedures applied by these courts and prosecutors of the regional jurisdiction were established to investigate and prosecute crimes of a certain gravity. The procedures provide judicial officials with certain special powers that other judicial officials lack. One of the principal and special features of the procedures applied by these courts and prosecutors is the use of secret witnesses. For security reasons, testimony presented by a secret witness is admissible before a regional court. Only the judicial official and the agent of the Public Ministry know the identity of the witness and they are obliged to keep it anonymous until the personal security of the witness is guaranteed. One limitation to the reception of this evidence is that it requires corroboration (art. 247, Criminal Procedure Code). Another special power given to regional officials is that the hearings are not open to the public. However, the parties are given a relatively long time to prepare their allegations in written form, instead of orally. Also, regional prosecutors can request preventive detention of a suspect during the investigation.

70. The Government argues that the reason for these special procedures is the prevalence of terrorist activities. Terrorists groups and drug traffickers have created a situation in which it became necessary to protect the lives and personal integrity of the members of the community, in particular judges, magistrates and other people who take part in court proceedings such as witnesses, expert witnesses, informants and victims who testify before the courts. It is alleged that the phenomenon of violence overwhelmed the capacity of the formal judicial system.

71. The Special Rapporteur takes note of the joint report of the Special Rapporteurs on the question of torture and on extrajudicial, summary or arbitrary executions, on their visit to Colombia from 17 to 26 October 1994. The Special Rapporteurs state:

> "Ordinary criminal justice also includes the regional courts, which were formerly called the public order courts and have jurisdiction in proceedings for offences such as terrorism, rebellion and drug trafficking. Non-governmental sources levelled harsh criticism against these courts and their operational procedures, which they considered to undermine due process. In the first place, these categories of offences have been broadly interpreted, resulting in the use of these courts to prosecute not only major criminals, but also activists from peasant, community, labour and similar organizations whose protests, political demonstrations and labour disputes are often characterized as terroristic or supportive of the guerrillas. As far as procedural aspects are concerned, the anonymity of the judges, prosecutors, criminal investigation police officers and even witnesses for the prosecution are still serious obstacles to the exercise of the rights of the defence, despite the reforms introduced in 1993. In this connection, the Fiscal

General de la Nación expressed to the Special Rapporteurs his view that there should be supervision of these courts in order to avoid abuses" (E/CN.4/1995/111, para. 85).

72. The Special Rapporteurs recommended, inter alia, the following:

" ...

"(c) As long as the Regional Justice System exists, the crimes falling under this jurisdiction should be clearly defined so as to avoid acts which constitute a legitimate exercise of political dissent and social protest being considered as 'terrorism' or 'rebellion'. Furthermore, defendants before regional courts must enjoy full respect for their right to a fair trial. The severe restrictions currently in place, including those affecting the right to habeas corpus a procedure essential for protecting people deprived of their liberty from torture, disappearance or summary execution, should be eliminated.

"(d) Effective protection should be provided for all members of the judiciary and the Public Ministry from threats and attempts on their lives and physical integrity, and investigations into such threats and attempts should be carried out with a view to determining their origin and opening criminal and/or disciplinary proceedings, as appropriate.

"(e) Likewise, provision should be made for effective protection of persons providing testimony in proceedings involving human rights violations, as appropriate" (para. 177).

73. The Special Rapporteur also notes that the Inter-American Commission on Human Rights stated in its second report on the human rights situation in Colombia (October 1993) that "faceless" judges and secret evidence are in clear contradiction to the American Convention on Human Rights.

2. Peru

74. During the months of November and December 1995 the Special Rapporteur sent two communications to the Government of Peru concerning cases of defendants who had been formally indicted or tried by tribunals composed of "faceless" judges. The two cases were of deep concern to the Special Rapporteur because the Government had informed him on 21 August 1995 that the anti-terrorist legislation which regulated the functioning of the "faceless" judges was to be abolished on 15 October 1995.

75. In addition, in a communication dated 1 May 1995, the Government submitted information concerning changes made to the internal legislation on terrorism. The Government indicated that it had issued Law No. 26447 as part of the national pacification process. Article 1 of Law No. 26447 provides that the prosecution of crimes of terrorism will be carried out "by the magistrates that correspond according to the procedural and organic norms in effect". This law, which would be put into effect after 15 October 1995, revokes article 15 of Decree Law No. 25475 by which the magistrates who take part in the proceedings of cases of terrorism keep their identity secret. The Government indicated that the use of "faceless" judges was necessary for the

present to protect the physical integrity and the lives of magistrates, who were constantly threatened and attacked by terrorists. The Government concluded that this demonstrated its political commitment to continue adapting its temporary and circumstantial terrorist legislation in accordance with the advances made in the fight against terrorism and the process of national pacification.

76. The Special Rapporteur has learned, however, that terrorism cases will continue to be tried by "faceless" judges until 11 October 1996 (Law No. 26537). Among the reasons given by the Government is that the terrorist organizations have not yet been dismantled.

3. Conclusion

77. United Nations special rapporteurs, the Inter-American Commission on Human Rights and human rights NGOs have condemned the use of "faceless" judges for the following reasons: it violates the principle of the independence of the judiciary; the practice restricts the defendant's right of due process; and it violates the right to a fair trial in a systematic way.

4. Preliminary observations of the Special Rapporteur

78. In a preliminary evaluation of the Governments' reasoning for the use of "faceless" judges, the Special Rapporteur is of the view that such special procedures violate the independence and impartiality of the justice system for a variety of reasons. The Special Rapporteur is, however, mindful of the need to protect the security of individual judges in terrorist-related cases. However, this issue requires further study and analysis. During the course of the coming year, the Special Rapporteur hopes to carry out a mission to Peru and Colombia to investigate these practices in situ, and to do a more exhaustive survey worldwide of similar practices before stating his final conclusions and recommendations.

B. Establishment of an International Criminal Court

79. The Special Rapporteur welcomes the proposed establishment of the International Criminal Court and the progress made towards its establishment.

80. The Special Rapporteur observes that while article 10 of the draft Statute provides for the independence of the judges of the Court, it is imperative that the provisions of the article are strictly implemented once the Court is established because the judges, at least in the initial stages, will not be full-time judges with any fixed remuneration, but will be paid allowances on a daily basis for work actually performed. The onus would be upon the Presidency of the Court to see that the judges do not engage in any employment inimical to their independence including those specifically prohibited under article 10 (2). At the earliest time the judges should be made full-time members of the Court.

C. Johannesburg Principles on National Security, Freedom of Expression and Access to Information

81. In paragraphs 58 and 59 of the Special Rapporteur's first report he raised the problems arising from restrictions imposed on judicial independence by Governments on the grounds of "reasons of State" and during states of emergency. The Special Rapporteur alluded to the need for possible additional standards to safeguard judicial independence even during such crises. In this regard, the Special Rapporteur welcomes the Johannesburg Principles on National Security, Freedom of Expression and Access to Information adopted on 1 October 1995 by a group of experts in international law, national security and human rights. The initiative for this meeting of experts was taken by the NGO article 19: the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of Witwatersrand in South Africa.

82. The Principles are based on international and regional law and standards relating to the protection of human rights, evolving State practice (as reflected, inter alia, in judgements of national courts), and the general principles of law recognized by the community of nations. The Principles also acknowledge the enduring applicability of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights and the Declaration of Minimum Humanitarian Standards applicable in a state of emergency (the Turku Declaration). The Principles spelled out in this document add to the meagre materials currently available on these subjects. The Special Rapporteur will from time to time refer to these standards to the extent that they are applicable to his mandate.

D. The media and the judiciary

83. In paragraph 61 of the Special Rapporteur's first report he referred to the increasing concerns about the relationship between the media and the judiciary.

84. The role of the media in the O.J. Simpson trial in the United States has raised the important question of how extensive media coverage could affect a fair and impartial trial. No doubt this issue has been addressed in several forums, including by judges. The issue came to the surface again in another criminal case in the United Kingdom in October 1995. In the case of R. v. Geoffrey Knights, the presiding judge, Judge Sanders, after detailing the manner in which the media had covered the pre-trial events, made the following scathing remarks about the media:

> "I have absolutely no doubt that the mass-media publicity in this case was unfair, outrageous and oppressive. I agree with Mr. Plumstead that it can be described as malicious. I also believe that there are grounds for instituting proceedings for contempt of court against the editors concerned and that there is an urgent need to investigate the possibility that certain journalists have colluded with and suborned prosecution witnesses.
>
> "I considered whether I could allow the trial to proceed on its due date by careful vetting of the jury and by giving special

directions to them. The glaring problem is that there can hardly be a potential juror on the panel who has not heard something about this case. The newspapers and articles are widely circulated. They are not of limited or specialist interest only to a few. They are national so I cannot move the venue. Any direction I give to the jury would only draw to their attention that which I wish to conceal. I had thought of delaying the trial for a reasonable period but I have no confidence that the media will leave it alone and in any event to delay the trial is oppressive to the complainant and defendant alike. Counsel would have an impossible task. He would undoubtedly want to question witnesses on what they allegedly told reporters where it is inconsistent with their statements and sworn testimony. It is arguably relevant to ask those witnesses who gave interviews whether they received payment for doing so. Their credibility has been put at issue by the interference of the press in the judicial process. Counsel could be accused of failing in his duty if he didn't refer to the press reports during cross-examination.

"I have not disregarded the serious nature of the case and the concerns of the alleged victim if his complaint is true but the newspapers have denied him the opportunity to put his case just as they have denied the defendant a fair trial. For those reasons I have stayed the proceedings. There has been a grave abuse of process here.

"I direct that the papers in the case be referred to the Attorney General to consider contempt of court proceedings against the editors concerned and I am also asking the Director for Public Prosecutions if she would investigate the possibility that individual journalists have made illegal approaches to prosecution witnesses."

85. It was reported that it was unprecedented in English legal history for a judge to discharge the jury even before the trial proper had commenced. The facts in this case once again reinforced the Special Rapporteur's concerns over the role of the media in the coverage of trials, and in particular pre-trial procedures. As previously stated, a fine balance needs to be struck between the right of the consumers of justice to a fair and impartial trial and the equally important right to freedom of expression and the corresponding right to information. The Special Rapporteur intends to work closely with the Special Rapporteur on freedom of expression and to seek the cooperation of organizations like the International Commission of Jurists and article 19 to formulate some standards to achieve this balance.

E. Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region

86. LAWASIA is the acronym for Law Association of Asia and the Pacific. Founded in 1966, it is the oldest regional association of jurists in the Asian-Pacific region. Its primary objective is "to promote the administration of justice, the protection of human rights and the maintenance of rule of law

in the region". The Association has a Judicial Section which, during the biennial conferences of the Association over the last 12 years, has held a parallel conference of Asian Chief Justices.

87. The Sixth Conference of Asian Chief Justices was held in Beijing in August 1995 in association with the fourteenth biennial conference of the association. Eighteen Chief Justices were present either personally or through their representatives. What emerged was an important document known as the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, which was adopted unanimously.

88. The Beijing Statement had its origin in a statement of principles known as the "Tokyo Principles" formulated by the LAWASIA Human Rights Standing Committee and a number of Chief Justices and other judges following a meeting held in Tokyo in 1982. It also draws heavily upon other international statements of principles including the Basic Principles on the Independence of the Judiciary, and the "Singhvi Declaration".

89. The Beijing Statement, declared to represent "minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary", is most welcome emanating as it does from Asian-Pacific countries including Australia and New Zealand. The Chief Justices of Australia, Bangladesh, China, Hong Kong, India, Indonesia, Mongolia, Myanmar, Nepal, New Zealand, New Caledonia, Pakistan, Papua New Guinea, the Philippines, the Republic of Korea, Singapore, Vanuatu, Viet Nam and Western Samoa signed the Statement, the Chief Justice of Malaysia, although not present in Beijing, had also agreed to sign.

90. The Special Rapporteur commends the Chairman of the Judicial Section of LAWASIA, the Chief Justice of Western Australia, Mr. David Malcom, for his untiring efforts in the preparation of the draft of the Statement.

91. The Special Rapporteur observes that the Statement will be an invaluable supplement to the existing standards. He will, from time to time, refer to the Statement in dealing with Governments and others in the Asian-Pacific region. The Special Rapporteur would welcome information from Bar Associations in the region on the extent to which Governments in the region have implemented the principles set out in the document.

F. Mechanisms for appointment of judges

92. The Special Rapporteur has undertaken a study on appropriate independent appointment mechanisms to ensure that men or women of the right calibre are appointed to the office of judge. In addition to the traditional safeguards necessary to secure judicial independence, in the final analysis it is the character, qualifications and independence of the individual appointee that make the difference. Hence the importance of the selection process.

93. At the request of the Special Rapporteur and with the cooperation of the Chief Justice of the Philippines, a study was undertaken by lecturers and a student of the School of Law of the Ateneo de Manila University on the procedure used for selection of judges in that country. Under the 1987 Constitution of the Philippines the members of the Supreme Court and judges of

High Courts are appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation. The Judicial and Bar Council is a constitutional creature composed of representatives from the judiciary, the Bar, academics and Government and lay persons. The Chief Justice is the Chairman and the Minister for Justice the Deputy Chairman.

94. The Constitution is also concerned with the quality of judges. It states that "a member of the judiciary must be a person of proven competence, integrity, probity and independence".

95. The Special Rapporteur has received the research material and is currently studying it. The Special Rapporteur would welcome the input of other organizations that have carried out similar studies or that are prepared to assist in similar research on how independent appointment mechanisms function in practice. The object of the exercise is to find suitable mechanisms for standard-setting.

G. Conflicts between the legal profession and the judiciary

96. The judiciary and the legal profession are integral institutions in any system of justice in civilized nations. Harmony, respect for each other's roles and close cooperation will guarantee an independent system of justice based on the highest principles. Conflict or tension between the two will adversely affect the administration of justice. In an adversarial system some conflicts are inevitable. It is left to the maturity of the individuals to put aside personalities and strive for the greater good of the system in general. But when the conflict is institution-based it leads to confrontations which will eventually mar the proper administration of independent justice.

97. The incidence of such conflicts appears to be on the increase and the Special Rapporteur is concerned. The situation needs to be monitored and data collected. A conflict-resolution mechanism may need to be devised within the Centre for Human Rights to be made available to such institutions to restore harmony when requested.

H. Commercialization of the legal profession

98. The organization of legal practices of lawyers needs to keep pace with modern changes, advances and liberalization policies. At the same time, professionals in the practice of the law must be mindful of the need to retain the element of independence needed to discharge their professional duties. Independence is needed not only when the lawyer is on his feet in court; it is needed even when he is in his law office advising clients or drafting a document. People seek him out for his independent advice and skills. It is this independence in the profession which distinguishes it from any other vocation or profession.

99. The Special Rapporteur expresses concern over the increasing trend towards commercialization of the practice of the law. Law firms in some developed and other countries are run more like large corporate institutions.

Rules on professional advertising have become so relaxed in these countries that the media, both print and electronic, are used for the purpose. The Special Rapporteur is considering undertaking a research programme to evaluate how this trend, if left unchecked, would erode not only the independence of lawyers but their professional status as well. The study would include the impact of an over-commercialized legal profession on judicial independence.

I. The Cairo Declaration

100. The Third Conference of Francophone Ministers of Justice took place in Cairo from 30 October to 1 November 1995. The meeting was organized by the Agence de cooperation culturelle et technique (ACCT). The meeting concluded with the Cairo Declaration, in which the participants, inter alia:

(a) Reaffirmed the Francophone community's support of the Basic Principles on the Independence of the Judiciary;

(b) Expressed preoccupation with obstacles to access to justice present in numerous countries, including the long distance to courts, high price of trial, ignorance of the law, lack of judicial assistance, and malfunctioning of certain jurisdictions;

(c) Agreed on the need to eliminate all impediments to the independence of judges, who are the primary guarantors of accessible and efficient justice, by providing them the legal and material means necessary;

(d) Agreed on the need to give greater emphasis on judicial training, particularly initial, continuing and specialized training, of judges and judicial personnel;

(e) Agreed to watch over the adoption and observance of ethical rules, in order to preserve the dignity of the judiciary;

(f) Agreed to participate actively in the work being done towards the convention establishing the International Criminal Court.

101. These are positive developments which the Special Rapporteur welcomes.

V. SITUATIONS

A. General

102. This section contains brief summaries of the urgent appeals and communications transmitted by letter to Governments, and the cases of allegations and urgent appeals to which replies were received from Governments. Observations by the Special Rapporteur have also been included where applicable. This section also contains a summary of substantive information the Special Rapporteur has received from Governments in response to his communications of October 1994.

103. In preparing this report the Special Rapporteur took note of those drawn up by his colleagues, Mr. Paulo Sérgio Pinheiro, Special Rapporteur on the human rights situation in Burundi (E/CN.4/1996/16, paras. 26, 146-147);

Mr. M. Kirby, Special Representative of the Secretary-General on the situation of human rights in Cambodia (A/50/681, paras. 35-38); Mr. J.-C. Groth, Special Rapporteur on the situation of human rights in Cuba (A/50/663, annex, paras. 23-24); Mr. Alejandro Artucio, Special Rapporteur on the human rights situation in the Republic of Equatorial Guinea (E/CN.4/1995/68, paras 23, 50-51 (a)); Mr. Tadeusz Mazowiecki, Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia (A/49/641-S/1994/1252, paras. 97-98, 141), Mrs. Monica Pinto, Independent Expert on the human rights situation in Guatemala (E/CN.4/1996/15, paras. 50, 55-57, 61, 64, 129-130); Mr. Reynaldo Galindo Pohl, Special Rapporteur on the human rights situation in the Islamic Republic of Iran (E/CN.4/1994/50, paras 95-96, 111); Mr. Gáspár Biró, Special Rapporteur on the situation of human rights in the Sudan (E/CN.4/1996/62, para. 24); Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1996/4, paras. 69-70, 92, 102, 129, 266, 426, 605-606).

B. Situations in specific countries or territories

Albania

Allegations transmitted to the Government

104. By letter dated 28 September 1995 the Special Rapporteur informed the Government that he had received information concerning allegations of threats to the independence of the judiciary.

105. According to the information received, the High Council of Judges, which has the power to nominate, remove and discipline lower court judges, had removed judges arbitrarily and without due process. This High Council of Judges included officials of the executive, which added to the appearance of impropriety.

106. The Government also proposed an amendment to the Constitution that would have allowed a judge of the Court of Cassation to be removed without cause.

107. The executive had taken some actions which, considered together, appear to constitute an attempt to undermine the authority and independence of the Court of Cassation. For instance, in the winter of 1994, the executive initiated actions in parliament to strip the Chief Judge of the Court of Cassation of his immunity. Later, the executive introduced a motion in parliament to remove two other staff members of the Court of Cassation. The executive continued to threaten the Court's budgetary authority following a decision of the Court to review the case of Fatos Nano, a socialist leader and former member of parliament. The executive petitioned the Court to remove the case from its jurisdiction and to suspend the enforcement of all orders of the Chief Judge. Finally, on 5 September 1995, the Minister of Justice was dismissed and the executive arrested or attempted to arrest the chief administrator of the Court, as well as other staff members. Furthermore, it is alleged that the court building itself was surrounded by police, who placed restraints on free access to the Court, and that some individuals who tried to enter the building were assaulted.

108. In his meeting with the Chargé d'affaires of the Permanent Mission of Albania to the United Nations at Geneva on 21 November 1995, the Special Rapporteur expressed his concerns about the situation of judicial independence. The Albanian representative provided a brief explanation of the current situation and promised to send to the Special Rapporteur a detailed reply from the Government by the end of December.

Response of the Government

109. On 12 January 1996 the Albanian Government submitted an official response to the Special Rapporteur's letter of 28 September 1995.

110. The Government explained that the removal of the immunity of the Chairman of the Court of Cassation and the approval of penal procedures against him were made in accordance with article 6 of Law No. 7561 dated 29 April 1992.

111. With regard to the budget of the Court of Cassation, the Government assured the Special Rapporteur that the Albanian courts have an independent budget that is administered exclusively by the courts.

112. Concerning the suspension of the enforcement of the orders of the Chairman of the Court of Cassation, the Government explained that it was done in accordance with article 25 of Law No. 7561 dated 29 April 1992.

113. With regard to the dismissal of the chief administrator of the Court of Cassation as well as two other employees, the Government explained that it was done in accordance with article 29 of Law No. 7491 dated 29 April 1991.

114. The Special Rapporteur is studying the Government's argument in more detail and expects to issue a response in the near future.

Argentina

Allegations transmitted to the Government

115. On 27 October 1995, the Special Rapporteur transmitted a communication to the Permanent Representative of Argentina to the United Nations Office at Geneva concerning the detention of Dr. León Zimmerman. According to the source, Dr. Zimmerman is the advocate for 200 families who peacefully occupied 27 hectares of land in Quilmes, near Buenos Aires. Subsequently, on 7 October 1995, the judge of the criminal and correctional court No. 4 of Quilmes, Dr. Abel Gonzales Elicabe, ordered the incommunicado detention of Dr. Zimmerman for the crimes of illicit association, usurpation and disobedience.

116. On 24 October 1995, the Special Rapporteur learned that Mr. Zimmerman was freed after the Appellate Chamber ruled that the charges of illicit association were null and void. The Special Rapporteur was also informed that the lower court judge, Dr. Gonzales Elicabe, was removed from the case.

Information transmitted by the Government

117. The Special Rapporteur received a communication from the Government concerning the case of León Zimmerman dated 13 December 1995. In its reply, the Government indicated that Dr. Zimmerman had been freed as a result of an order issued by the Criminal and Correctional Chamber of Appeals of the Jurisdiction of Quilmes which decreed the nullity of all the proceedings that had been carried out. In the same regard, the judge who replaced Dr. Gonzales Elicabe ordered the dismissal of the case against Dr. Zimmerman.

Australia

Victoria

118. In May 1994 the Attorney General of the State of Victoria published a discussion paper entitled "Reform of the Legal Profession - An Agenda for Change". Among the proposals made in the paper was a proposal to have a regulatory body appointed by the executive which would in effect have the ultimate power over licensing of lawyers to practise in the State of Victoria. The Law Institute of Victoria, a statutory body under the Legal Profession Practice Act 1958, which is the professional and regulatory organization for solicitors, while agreeing to some of the Attorney General's proposals took objection to the proposal to set up a regulatory board as such a board would affect the independence of the legal profession in Victoria. The controversy escalated into a confrontation between the Attorney General and the legal profession in Victoria through both the print and electronic media.

119. On being informed of the proposals the Special Rapporteur sought a meeting with the Attorney General. The Special Rapporteur took advantage of his attendance at a meeting in Adelaide on 27 March 1995 to fly to Melbourne on 28 March where he had a brief meeting with the Attorney General. The Attorney General said that the proposals had been misunderstood and assured the Special Rapporteur that it was not the intention of her Government to interfere with the independence of the legal profession in Victoria. It was the intention of her Government rather to permit lawyers to form their own associations. Such associations would be accredited to issue licenses to practise to its members; in the event a lawyer did not wish to belong to any association then the proposed central regulatory board would issue the licence. Her proposal obviously had the effect of taking away the monopoly of the Law Institute and thus fragment the legal profession currently organized under one body into pockets of associations.

120. The Special Rapporteur learned from a subsequent press statement attributed to the Attorney General that her proposal for such a regulatory body had been "endorsed in the Federal Government report on access to justice" released the previous year.

121. In 1994 the Federal Government of Australia did release a report entitled "Access to Justice - An Action Plan - Overview". In the report the following observation, inter alia, was noted:

"The regulation of the legal services market and of the legal profession raises issues that are of central importance to access to justice. Within the framework of ethical responsibilities designed to assist the administration of justice, lawyers protect the rights and advance the interests of the clients they represent. If the legal profession is regulated in a manner that impedes the freedom of lawyers to compete with each other, legal services will not be provided efficiently and consumers of legal services will pay additional costs. Similarly, if the structure of the profession is such that consumers are required to pay for duplication of legal work or unnecessary services, the cost of legal representation will be increased and access to justice thereby diminished. If the exclusive right of lawyers to perform legal services is framed too broadly, consumers are likely to be denied the chance to purchase services from providers (such as conveyancers) who may be prepared to provide them at lower prices than lawyers.

"With this in mind, we propose that the Commonwealth and the States should cooperate in restructuring the legal services market in Australia, by exposing it to competition policy. Of course, we do not suggest that competition principles provide a complete solution to access to justice problems (as is evidenced by all the other areas we have canvassed). None the less, we advocate the extension of the competition principles embodied in the Trade Practices Act 1974 (Cth) to the legal services market throughout Australia. We prefer that this extension take place in the context of the application of the Act to all unincorporated businesses and professions, as a result of a reference of powers by the States to the Commonwealth. Such a reference was suggested by the Hilmer Committee in its report, National Competition Policy, and is presently under consideration by the Council of Australian Governments (COAG).

"We also suggest that the Governments of all States vest the regulatory functions relating to the legal profession in a statutory body, independent of the professional associations, although we think the associations could continue to be involved in the administration of the regulatory system. An alternative, but not our preferred view, is that professional associations should continue to discharge regulatory functions, but that an independent body have the power to disallow rules of the associations on public interest grounds. We consider that those States that maintain formal divisions between solicitors and barristers should remove those divisions, although this would not prevent those who wish to practise as specialist advocates at a separate Bar from continuing to do so."

It is noted that the Federal Government's proposals, as stated above, are in general terms; such is implicit from the word "overview". It was contended that the Attorney General's proposals went beyond and had the effect of threatening the independence of the profession.

122. The Special Rapporteur has been monitoring developments in Victoria on this very issue. He has learned that the Attorney General appointed a working party to examine the proposals contained in her earlier discussion paper. The working party's report was published in September 1995. The recommendation of the working party on the issue of the regulatory board is that it be composed

of three non-lawyer members appointed by the executive and three members elected by the profession. The Chairman should be a serving or retired judge. The question of assuring the independence of the members in terms of their office and conditions for removal is being studied.

123. Subsequent to the release of the working party's report the Attorney General in December 1995 released proposals for a draft Legal Practice Bill to replace the current Legal Profession Practice Act, 1958 for public comment prior to tabling before parliament. The purpose of this exercise is to receive further public comments on the proposals "before a final decision is made by the Victorian Government on the issues covered by those proposals". It has been learned that further changes may be proposed and hence the Bill is not likely to be tabled before Parliament until later this year.

124. The Special Rapporteur is regularly in touch with the Law Institute of Victoria and other interested groups and is monitoring developments. The Special Rapporteur, while commending the Victorian government for constantly seeking the public's views and those of the profession on its proposals and taking them into consideration, nevertheless would urge the government not to formulate any legislation which would undermine or be seen to undermine the independence of the legal profession in Victoria. Any such legislation emanating from Australia, whether at the federal or state level, would send the wrong signal to Governments in some countries in the region where the independence of the profession remains fragile.

Action commenced by the judges of the abolished Accident Compensation Tribunal

125. A brief reference was made in the report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities by Mr. Louis Joinet (E/CN.4/Sub.2/1993/25, para. 131) regarding the removal of the 11 judges of the Accident Compensation Tribunal by the repeal of the legislation which created the Tribunal. The affected judges were offered neither other similar or equivalent judicial posts nor were they compensated. The judges complained that upon appointment they had been assured of security of tenure, like any other independent judge. The Government's contention was that those judges did not enjoy such security of tenure. The State government was alleged to have resorted to removing the judges by legislating the entire Tribunal out of existence, thereby making its judges redundant. Concerns were expressed in many quarters that such action undermined judicial independence. Nine of the 11 judges have since commenced legal action in the Federal Court in Victoria for compensation arising from their removal.

126. The Special Rapporteur has been monitoring developments in this pending action. At the time the present report went to press it was learned that the parties were still at the stage of filing affidavits and the action is likely to be scheduled for hearing later this year. The decision of the federal court in this action would have important implications for the security of tenure of judges of statutory tribunals and thus for their independent status. The Special Rapporteur intends to observe the proceedings personally or to send a representative to the hearing.

Western Australia

127. At the time the present report went to press the Special Rapporteur received information that a report based on a review of Western Australian labour relations legislation had recommended, inter alia, that the office of the President of the Western Australian Industrial Relations Commission who hitherto had the status of judge, be abolished. Fears have been expressed that the present holder of the office may not be appointed to another judicial post if his office is abolished as expected.

128. The Special Rapporteur views this latest development with concern and will be writing to the Attorney General of Western Australia. This once again raises the issue of the security of tenure of judges of statutory tribunals.

New South Wales

129. In an unprecedented move the State government of New South Wales conducted a referendum in the State to seek public approval to entrench judicial independence so that Parliament is prevented from changing the laws affecting judicial independence without a referendum. The referendum was held in conjunction with the State election on 25 March 1995. The results were 65.9 per cent of the electorate in favour of such entrenchment and 34.1 per cent against.

130. Though the Special Rapporteur has yet to see the text of the legislation to entrench, he commends the New South Wales government for this bold, unprecedented and positive step to enhance judicial independence in that State. The Special Rapporteur also commends the legal profession in New South Wales whose members lobbied among the voters for support.

Cambodia

Information transmitted to the Government

131. On 6 January 1995 the Special Rapporteur informed the Government that he had received information alleging that the executive branch of Government was to be entrusted with the power of appointment, promotion and dismissal of judges.

132. On 10 January 1995 the Permanent Mission of Cambodia to the United Nations Office at Geneva sent an acknowledgement of receipt of the communication transmitted by the Special Rapporteur and indicated that it had been forwarded to the Government. To date, no further response has been received from the Government.

China

Information transmitted to the Government

133. On 14 December 1995, the Special Rapporteur sent an urgent joint appeal with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the right to freedom of opinion and expression

regarding the case of Wei Jingsheng. The appeal called the attention of the Government to a previous communication transmitted by the Chairman of the Working Group on Arbitrary Detention dated 27 June 1995 regarding the reported incommunicado detention of Mr. Wei, to which the Government had not replied. The Special Rapporteur has yet to receive a response.

134. According to the information received, Mr. Wei was formally arrested on 21 November 1995 by the public security organs on charges of "plotting to overthrow the Government", and that on 13 December 1995 he was sentenced by the Beijing No. 1 intermediate people's court to 14 years' imprisonment. It was reported that his family found out only on 8 December that his trial would start on 13 December, thus leaving no time for him to prepare his defence. It was also alleged that Mr. Wei's lawyer had not been allowed access to him.

Colombia

Information transmitted to the Government

135. On 10 August 1995 the Special Rapporteur submitted an urgent appeal to the Government concerning the murder of human rights lawyer Javier Alberto Barriga Vergel on 16 June 1995. According to the source, Mr. Vergel was acting on behalf of the Committee for Solidarity with Political Prisoners (Comité de Solidaridad con los Presos Políticos), which is very active in investigating numerous cases of human rights violations that implicate members of the police, the army and paramilitary groups.

Information received from the Government

136. On 16 August 1995 the Government replied to the urgent appeal on the case of Mr. Vergel by indicating that the Presidential Advisory Council for Human Rights had met with the Committee for Solidarity with Political Prisoners and that certain agreements had been made. The Government agreed to expedite the investigations. In this regard, an official note was sent to the National Director of Public Prosecutors to ensure that the appropriate measures are taken for a thorough investigation of the case. As a consequence, the National Direction of Public Prosecutors ordered the transfer of the investigations that were undertaken by the prosecutor's office in Cúcuta to the prosecutor's office in Bogotá and a special prosecutor was assigned to the case. The Government noted that this would allow a more efficient investigation in a place other than where the events took place. The Government further stated that it would make arrangements to guarantee the security of the members of the Committee for Solidarity with Political Prisoners in Cúcuta. Finally, the Government stated that it will submit for the consideration of the President of the Republic a proposal consisting of a statement concerning the activity of defence lawyers representing alleged members or real members of insurgent organizations.

137. The Government also indicated that the Special Rapporteur will be informed of the results of the above-mentioned investigations and the implementation of the agreements made. To date, the Special Rapporteur has not received this information.

Observations

138. In light of the mission that is being sought to the country, the Special Rapporteur will address the situation in Colombia in greater detail at a later date.

Egypt

Information transmitted to the Government

139. On 24 June 1994, the Special Rapporteur sent a letter to the Ambassador of Egypt in Kuala Lumpur requesting information on the detention of lawyers.

140. On 27 July 1994, the Special Rapporteur sent a letter to the Ambassador of Egypt in Kuala Lumpur requesting a list of the names of those lawyers arrested and released.

141. On 14 September 1994, the Special Rapporteur sent an urgent appeal to the Government of Egypt concerning the detention of several lawyers following demonstrations protesting the death of a lawyer while in detention. The Special Rapporteur also indicated that it had been brought to his attention that there was fear that the Bar Association would be dissolved by administrative action, as had happened in the past.

Information transmitted by the Government

142. On 18 October 1994, the Government replied to the Special Rapporteur's letters dated 27 July 1994 and 14 September 1994. In its reply, the Government indicated that some members of the Bar Association had exploited their posts by claiming to speak on behalf on their colleagues and adopting positions that did not necessarily represent the views of the majority of members of the Association. The Government did not make any attempt to interfere in the dialogue that was taking place, since it wished to show full respect for the Association's independence and the status of the legal profession.

143. In this regard, some groups within the Association claimed to represent lawyers as a whole and exploited rumours concerning the death of the lawyer Abdel Harith Madani in detention in order to gather together about 600 lawyers at the Association's headquarters on 17 May 1994 when a member of the Association's Council, using a loudspeaker, urged them to immediately hold a public demonstration in the street without giving prior notification to the authorities of their intention to do so.

144. The Government indicated that after several attempts to prevent the lawyers from demonstrating in this way, and after giving the requisite warnings, the security services were forced to use an appropriate degree of force to restrain them in accordance with the regulations in force for the dispersal of demonstrations and gatherings in order to prevent riots and acts of violence.

145. As a result of the intervention of the security forces, 36 lawyers were arrested and were charged with various offences, including participation in a

criminal conspiracy to hold an unlawful gathering and demonstrations, assaulting the public authorities who were carrying out their official duties, throwing stones at vehicles and passers-by and resisting the public authorities. Furthermore, the Government listed the legal norms that were used as a basis to file the charges.

146. All of the lawyers were released unconditionally after being held in custody for various periods of time.

147. With regard to lawyer Madani who allegedly died in detention, the Government stated that Mr. Madani had had serious health problems before he was detained and that the day after being detained he was taken to hospital where he died from an acute asthma attack.

148. With respect to the fears concerning the possible dissolution of the Bar Association, the Government affirmed that there was no real cause for such fears, nor was there any reason to attempt to influence or interfere in the work or activities of the Bar Association as long as the persons running its affairs abided by the provisions of the law.

Observations

149. The Special Rapporteur has not had the benefit of an in situ investigation into the allegations and the Government's contentions. However, the Special Rapporteur had the benefit of reading the report of the Centre for the Independence of Judges and Lawyers (CIJL) which undertook a mission to Egypt from 10 to 16 August 1994. The Special Rapporteur notes the following recommendations of the CIJL:

(a) The Egyptian Government should ensure that the measures taken under the state of emergency are strictly required by the exigencies of the situation in accordance with Egypt's obligations under international law, particularly under the International Covenant or Civil and Political Rights;

(b) The Egyptian legislature should enact laws to prevent the trial of civilians before military courts. The laws allowing for the establishment of special courts should be reviewed in order to respect the right of Egyptian citizens to be tried by ordinary judges in accordance with international law;

(c) The legislature is also encouraged to draft forceful guarantees for the protection of detained persons against torture and other humiliating treatment. State Security personnel should be prevented from interrogating, intimidating and torturing detainees under the protection of the Prisons Service;

(d) Lawyers must be allowed free contact with their clients without intimidation or interference. The confidential contacts with their clients and their families must be respected. All lawyers who were detained for reasons relating to their profession should be set free at once;

(e) Law No. 100 of 1993 concerning professional associations should be reviewed to preserve the independence, the right to free association and the right to self-government of professional associations, including the Bar Association, as required by the Basic Principles on the Role of Lawyers;

(f) Members of the Egyptian Bar are encouraged to adhere to the Basic Principles on the Role of Lawyers in order to enhance their professionalism, independence, freedom of association and freedom of expression;

(g) The Egyptian Government should appoint an independent judicial committee to investigate all cases of deaths of civilians in detention, including the case of lawyer Madani and, if it is found that these deaths resulted from official acts or omissions, should prosecute those responsible.

Hong Kong

150. In January 1995 the Special Rapporteur received a letter from Mr. Philip Y.I. Li, a member of the legal profession in Hong Kong who was also a member of the Law Society Council. Though the background to this complaint was the controversy over the establishment of the Court of Final Appeal in Hong Kong to replace the Privy Council, after reading all the materials received the Special Rapporteur determined that the thrust of the complaint concerned the internal management of the Law Society, specifically the use or abuse of proxy votes at the then-forthcoming extraordinary general meeting of the Law Society in connection with the stand to be taken by the Society on the Court of Final Appeal issue.

151. The Special Rapporteur sought a response from the President of the Law Society on the allegation. After deliberating on the materials received subsequently, the Special Rapporteur came to the opinion that the complaint did not fall within his mandate and sent Mr. Li a letter stating, inter alia:

> "However, my mandate, and interpreting it from the events leading to the creation of the same mandate, is to investigate complaints of actions or inactions resulting in a lawyer's inability to perform his professional functions as a lawyer independently without fear or favour.
>
> "There appears to be no evidence to indicate that the allegation of pressure on certain lawyers over their right to vote at the same meeting, if proven true, may affect, interfere or hinder the alleged pressured lawyers' professional performance of their duties as lawyers.
>
> "The Special Rapporteur should not, and for that matter, should not be seen to be interfering in the internal affairs of law societies or Bar Associations unless the particular society or association seeks his assistance or advice on specific matters."

152. As the issue attracted media attention in Hong Kong, the Special Rapporteur issued a press statement to the same effect.

Japan

Information transmitted to the Government

153. On 6 March 1995, the Special Rapporteur sent a communication to the Government with regard to information he had received concerning the system of appointment of lower court judges. In his letter to the Government he stated that, according to information received from the source, there was discrimination against certain candidates when the Cabinet appointed the judges of the lower court from a list of persons nominated by the Supreme Court. The Supreme Court normally compiles an "Assistant Judge Appointment List" of potential candidates from among graduates of the Legal Training and Research Institute. The Cabinet then makes the appointments based on the list, thus respecting the will of the Supreme Court. However, according to the source, since 1970 there had been 49 cases of graduates being denied appointment. It was alleged that these 49 were rejected because of their "thought or creed".

Information transmitted by the Government

154. On 8 March 1995, the Special Rapporteur received a reply from the Government to his communication in which the Government described the system of selecting judges. In the selection and appointment of an assistant judge from among the legal apprentices who wished to be judges, the Supreme Court of Japan had constantly considered competence, insight and other factors, based on the records of the Legal Training and Research Institute. Furthermore, the Supreme Court had never refused to appoint a person as a judge because of his or her thought or creed.

The daiyo kangoku system

155. The role of the daiyo kangoku ("substitute prison") in the Japanese criminal justice system has been the subject of concern to lawyers and others. The concern is largely over the use of such places for obtaining pre-trial confessions. It is alleged that the usual safeguards for the protection of the human rights of the accused are absent and that judges tend to accept without question confessions obtained in this manner. Since 1958 the Japanese Federation of Bar Associations has publicly called for the abolition of the system. At the request of the Association the International Bar Association sent a mission to Tokyo with the support of the International Commission of Jurists and the Law Association of Asia and the Pacific in 1994/95.

156. The Special Rapporteur was sent a copy of the report of the mission. Of concern to the Special Rapporteur is the finding that the daiyo kangoku raises problems for "the rule of law and the independence of the judiciary in Japan". The mission found that the ready acceptance by judges of confessions obtained under the system leads to the perception of the judiciary as being an extension of the prosecution, and called for the judges to be educated "in the true import of the concept of the independence of the judiciary".

157. The Special Rapporteur views the findings of the mission with regard to the independence of the judiciary in Japan with some concern and will pursue the matter further with the relevant government authorities in Japan.

Malaysia

158. A few recent decisions handed down by the courts have placed the Malaysian judiciary in the spotlight with allegations of impropriety. The catalyst was a questionable decision of a High Court judge on an ex parte application in a commercial case. Both the High Court judge and the conduct of the lawyer who acted for the applicants were criticized by the Court of Appeal in rather strong terms. The Federal Court (the highest appellate court) in a lightning appeal set aside the judgement of the Court of Appeal and severely, in even stronger language, reprimanded the three appeal judges and directed that certain parts of the Court of Appeal judgement be expunged.

159. This commercial case involved a struggle by businessmen to take control of a publicly listed company called Ayer Molek; millions of ringgit were at stake. The facts of the case and the manner in which the court procedures were used for the attempted take-over of the company and the language of the judgements of the Court of Appeal and the Federal Court presided over by the Chief Justice led the Bar Council of Malaysia to issue the following press statement on 21 August 1995:

> "The Bar Council is deeply shocked at the extraordinary events in the Ayer Molek Rubber Company case. These events are a matter of very great concern to the commercial and corporate community and to the general public. The totally differing views and comments of the Court of Appeal and the Federal Court raise very serious questions as to the administration of justice in Malaysia. These questions demand an answer. Something is very seriously wrong."

160. The events aroused considerable public anxiety over the integrity, independence and impartiality of the judiciary. This was compounded by subsequent revelations that the judgement of the Federal Court could be a nullity because one of the three judges who sat at that Federal Court sitting was not qualified to do so under the provisions of the Malaysian Constitution. On 23 August 1995 the Special Rapporteur issued the following press statement:

> "Complaints are rife that certain highly placed personalities in Malaysia including those in the business and corporate sectors are manipulating the Malaysian system of justice and thereby undermining the due administration of independent and impartial justice by the courts.
>
> "Under the mandate entrusted to me by the United Nations Commission on Human Rights, I am duty bound to investigate these complaints and report to the same Commission, if possible, at its fifty-second session next year. To facilitate my inquiries I will seek the cooperation of all those involved in the administration of justice, including the Government which, under my mandate, is requested to extend its cooperation and assistance."

161. In a speech delivered at the opening of an international conference in Kuala Lumpur on 9 December 1995, the Deputy Prime Minister of Malaysia, Dato Anuar Ibrahim, alluded to the events and the public anxiety over the state of the judiciary. He said, inter alia:

"The growing concern of the public as regards the increasing incidence of judicial indiscretions is not a matter to be taken lightly, nor viewed negatively. In tandem with the growing maturity of our society, the people's consciousness and expectations of the moral dimension of justice is greater. Not only must judges display the requisite level of competence and expertise; like Caesar's wife [they must] be above suspicion."

162. The Special Rapporteur has since gathered information and is continuing to do so. Following the terms of his mandate, the Special Rapporteur will not only inquire into allegations of erosion of judicial independence but will inquire into and identify causes leading to such erosion and provide specific recommendations.

163. The causes which have led to the present state of the judiciary could be traced to 1987/88 beginning with the amendment to the Malaysian Constitution to remove judicial power from the High Court and the subsequent judicial crisis when six independent senior judges of the then Supreme Court, including its Lord President, were subjected to disciplinary tribunal proceedings. Three were dismissed, including the Lord President.

164. The then Chief Justice, Tan Sri Hamid Omar, who presided over the tribunal which recommended the removal of the Lord President, succeeded to the office of the Lord President of the Supreme Court. And this same Lord President retired from office in 1994 amidst several police reports lodged against him for corruption. The Attorney General in a public statement said that there was no evidence for any prosecution.

165. Due to space constraints in the present report coupled with the investigations still in progress, the Special Rapporteur will submit a separate detailed report on the state of the Malaysian judiciary to the Commission at a later date.

Mexico

Information transmitted to the Government

166. On 6 July 1995 the Special Rapporteur sent a communication to the Government expressing his outrage at the assassination of Judge Polo Uscanga on 19 June 1995. In his communication, the Special Rapporteur referred to his previous urgent appeal sent to the Government on 19 June 1995. On that occasion, the Special Rapporteur advised the Government of the information he had received concerning the resignation under pressure of Judge Abraham Polo Uscanga on 1 April 1995 because he refused to issue a warrant for the arrest of the leaders of the Union Ruta 100. Following his resignation, Judge Polo Uscanga issued a statement explaining that he had refused to issue the warrant because he considered that it did not satisfy the minimum evidentiary requirements. Soon afterwards, he began receiving threatening phone calls. According to the information received, Judge Polo Uscanga was kidnapped at gunpoint, blindfolded and taken to an unknown destination, severely tortured, and then released. He was subsequently found shot to death.

167. The Special Rapporteur considers that the death of Judge Polo Uscanga puts at grave risk the independence and the impartiality of the judiciary in Mexico. The Special Rapporteur considered that if a thorough investigation is not carried out and the responsible parties punished, a climate of distrust and impunity and a grave precedent will be established for the magistrates of the United States of Mexico.

Information transmitted by the Government

168. On 14 December 1995, the Government replied to the communications of the Special Rapporteur concerning Judge Polo Uscanga. In its reply, the Government attached a copy of a report submitted by the Commission of Human Rights of the Federal District and of a report submitted jointly by the Federal Prosecutor and an ad hoc commission created by the National Assembly.

169. The report of the Commission of Human Rights dated 18 July 1995 stated that the Superior Tribunal of Justice of the Federal District authorized a leave of absence requested by Judge Polo Uscanga on 1 April 1995. The reason for the request, according to the judge, was that another member of the Tribunal, Mr. Saturnino Agüero Aguirre, had tried to intimidate him. On 5 June 1995, Mr. Polo Uscanga filed a complaint that he had received death threats and that he had been kidnapped and tortured. The report contained extensive details of the torture allegedly suffered by Mr. Polo Uscanga. On 20 June 1995, his body was found in circumstances that led the police to think that he had been murdered.

170. According to the joint report, Judge Polo Uscanga was shot in the back of the head by two or three people. The gun found at the scene of the crime was the murder weapon. Nothing had been stolen from his apartment.

Observations

171. The Special Rapporteur thanks the Government for providing him with the preliminary results of the investigation on the assassination of Judge Polo Uscanga. However, the Special Rapporteur wishes to express his view that it is still necessary to identify and bring to justice those responsible for this outrageous crime, which will continue to be a threat to the independence of judges and lawyers in Mexico.

Namibia

Information transmitted to the Government

172. On 29 May 1995, the Special Rapporteur sent a message to the Attorney General, Advocate R.V. Rukoro, concerning the information he had received concerning the Legal Practitioner's Bill 1995 which had been tabled in Parliament. According to the information received, it appeared that certain provisions of the Bill would have the effect of directly undermining the independence of the legal profession in Namibia and, subsequently and inevitably, the independence of the judiciary.

Information transmitted by the Government

173. On 16 June 1995, the Ministry of Justice of Namibia replied to the Special Rapporteur's communication concerning the Bill. He indicated that nothing in the Legal Practitioner's Bill 1995 could objectively be said to violate the universally accepted norms for the protection of an independent legal profession. The Minister of Justice indicated that what was really at issue was simply self-interest. The members of the Law Society and the Society of Advocates were all white but for a handful of indigenous black lawyers. After independence, the status quo continued whereby their law firms were entrusted with the training and admission of new advocates and attorneys through articles of clerkship. Their firms were under no obligation to take any law graduate but could do so at their discretion.

174. The Minister further stated that there were well in excess of 25 young black law school graduates at the time of independence who had acquired their academic qualifications in exile during the struggle, most of them from reputable universities like Warwick in the United Kingdom. Most of these young men and women could not get articles from the white law firms. According to the law firms, any legal education acquired outside South Africa, which was their bastion, was suspect.

175. The result of this had been that since independence 5½ years ago the "so-called independent legal profession" had not admitted a single advocate and only a handful of attorneys, certainly less than five. This was a poor record and it could be said that there was a deliberate attempt to keep the number of legal practitioners as low as possible.

176. Private legal practitioners are at present found only in Windhoek and a few of the larger centres which were previously, under the apartheid law, designated as police zones where blacks were not allowed to live. Well over 70 per cent of the population lived and still lives outside these zones and not a single one of those towns has even a single private legal practitioner. They have to travel 500-900 kilometres to obtain the services of a lawyer.

177. With such an imbalance of legal services, it had become a matter of necessity for the Government to look at other ways of training lawyers at a pace that would be acceptable to address the imbalance. The Law Faculty was therefore established at the University as well as a Justice Training Centre to train graduates in practical skills. This method of training is not particular to Namibia; it exists in many other countries.

178. The definition of legal practitioner contained in the Bill and complained of by the law societies is also a definition found in most legal systems. Lawyers are lawyers in whichever sector they work. The Bill's only "mischief" is to bring about changes that would afford Namibians equal opportunities both to study law and to obtain the services of lawyers by ensuring the training of more lawyers to join the legal profession.

179. The Minister of Justice considered that in view of the above-mentioned reasons he did not consider it necessary for the legislative programme of the National Assembly to be deferred owing to the Special Rapporteur's involvement.

180. The Government raised a question regarding the intervention of the Special Rapporteur at the present stage of the situation. It is indicated that both the Optional Protocol to the International Covenant on Civil and Political Rights and resolution 1503 (XLVIII) of the Economic and Social Council, which recognized the right of individuals or groups of individuals to communicate complaints about violations of their human rights to bodies such as the mandate of the Special Rapporteur, provide that all possible domestic remedies must be exhausted before the complaint can be entertained. In Namibia, citizens have a right to test the constitutionality of any Act of Parliament in a competent court of law. This condition has not been fulfilled by the two societies. The Minister questioned whether the Special Rapporteur was not obliged to ensure that this procedure is adhered to.

181. The Special Rapporteur thanks the Minister of Justice for his detailed reply, which raises important issues on the structure of the legal profession and for equal opportunities for all citizens without any discrimination.

Observations

182. While the Special Rapporteur is of the opinion that it is unnecessary for special rapporteurs and working groups of the Commission on Human Rights to delay consideration of an issue brought to their attention until domestic remedies have been exhausted, he nevertheless intends to raise this issue at the forthcoming meeting of special rapporteurs scheduled for 28 to 31 May 1996.

Nigeria

Information transmitted to the Government

183. On 2 November 1995, the Special Rapporteur and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a joint urgent appeal to the Government of Nigeria drawing the Government's attention to the information they had received containing the following grave allegations.

184. On 30 and 31 October 1995, Ken Saro-Wiwa, writer, environmentalist and President of the Movement for the Survival of the Ogoni People (MOSOP), as well as Dr. Barinem Kiobel, Saturday Dobee, Paul Levura, Nordu Eawo, Felix Nuate, Danial Gbakoo, John Kpuinem and Baribor Bera, were reportedly sentenced to death by hanging by the Civil Disturbances Tribunal in Port Harcout, Rivers State. They were allegedly convicted in relation to the murder of four Ogoni leaders in May 1994. After their arrest in May 1994, the nine were reportedly held incommunicado for eight months, without any charges brought against them. They were allegedly ill-treated during their detention in overcrowded and unhygienic cells, and they were allegedly denied medical treatment. The trial of the nine had been reported to be unfair, and the defendants allegedly had no right to appeal against the sentence.

185. The denial of medical treatment might have resulted in the death of another accused, Clement Tusina, who reportedly died from diabetes on 15 August 1995 during detention.

186. Disturbing reports had been received concerning the lack of independence and impartiality of the Civil Disturbances Special Tribunal, which was allegedly established by the Government especially to try the case in two separate trials. The Government was reported to have appointed the members of the Tribunal, among whom was a serving armed forces officer. It was alleged that the verdicts and sentences of the Special Tribunal would have no legal status until confirmed by the Government, which could accept or reject the Tribunal's findings in secrecy without any legal argument and without giving any reasons. Moreover, it was alleged that the military had wielded an improper influence over the Tribunal's proceedings. It was furthermore alleged that two key prosecution witnesses had been bribed and threatened to give false evidence, and the defence lawyers of Ken Saro-Wiwa were reported to have withdrawn from the trials in June and July 1995, as a protest against alleged bias of the Tribunal in favour of the prosecution.

187. On 9 November 1995, the Special Rapporteurs reiterated their urgent appeal of 2 November to the Government of Nigeria. They expressed deep concern to have learned that the Provisional Ruling Council on 9 November 1995 had unanimously confirmed death sentences for the nine persons, including Ken Saro-Wiwa. The Special Rapporteurs strongly urged the Government of Nigeria to refrain from carrying out the death sentences and urgently to provide the Special Rapporteurs with information concerning the way the trial was conducted.

188. The Special Rapporteurs, on 2 November and 9 November 1995, jointly issued press releases in which concern was expressed about the human rights situation in Nigeria and the confirmation of death sentences on the nine Ogoni activists respectively.

189. On 21 November 1995, the Special Rapporteur wrote to the Chargé d'affaires of the Permanent Mission of the Federal Republic of Nigeria to the United Nations Office at Geneva stating that in the light of recent events and the concern expressed by the international community over the state of the rule of law and human rights, including the independence of judges and lawyers, in Nigeria, he would like to undertake a joint mission with the Special Rapporteur on extrajudicial, summary or arbitrary executions to investigate and to report on the state of the independence of judges and lawyers pursuant to the mandate given him by the Commission on Human Rights. The Special Rapporteur requested the Government of Nigeria to extend all facilities and access to all materials and personalities so that he might be able to carry out his mission meaningfully and constructively. The Special Rapporteur sought an immediate response to his proposal to enable him to carry out his mission within three months from 21 November 1995. Although consultations have been held with the Chargé d'affaires and Ambassador of Nigeria, to date the Special Rapporteur has not received a response from the Government concerning such a mission.

190. On 4 December 1995, the Special Rapporteur wrote to the Chargé d'affaires of the Permanent Mission of the Federal Republic of Nigeria to the United Nations Office at Geneva, drawing his attention to information received by the Special Rapporteurs concerning the case of 17 Ogoni activists who were arrested in mid-1994 following the alleged murder of four Ogoni leaders in May 1994. It was alleged that the 17 individuals were detained incommunicado

and without charge from mid-1994 until June 1995. It was alleged that they were brought before a magistrate's court in Port Harcourt on a "holding charge", believed to be for murder. It was further alleged that four other Ogoni activists - whose identities are not known - were reportedly arrested on 24 October 1995 and charged with murder, also in connection with the May 1994 murders. Following the execution of the nine Ogoni activists on 10 November 1995, concern had been expressed that the 21 Ogoni activists referred to above could be unfairly tried and sentenced to death by the Civil Disturbances Tribunal, which was considered not to be independent. Further, it was a fact that there was no right of appeal from the decisions of that Tribunal and it was left to the discretion of the executive to either confirm or not to confirm the conviction and death sentence.

191. If these allegations are correct, the 21 Ogoni activists would be tried by a tribunal devoid of the universally accepted basic norms for independent and impartial justice. To date, the Special Rapporteur has received no response to this communication.

192. On 8 February 1996 the Special Rapporteur and the Working Group on Arbitrary Detention transmitted an urgent appeal to the Ministry of Foreign Affairs on behalf of Gani Fawehimni, a human rights lawyer who allegedly had been detained by the security forces and was being held incommunicado without any criminal charges having been brought against him.

193. On 22 November 1995, the Permanent Mission of the Federal Republic of Nigeria to the United Nations Office at Geneva forwarded to the Centre for Human Rights a press release issued by the Attorney General of the Federation of Nigeria and Minister of Justice, as well as information on the carrying out of the death sentences passed on Ken Saro-Wiwa and the eight other Ogoni activists. In the press release, the Attorney General "maintains that Nigeria as a sovereign nation will not accept dictations from members of the Western World who apply double standards where it suits their purposes". The Attorney General claimed that the Ogoni trial was "fair, open and in accordance with acceptable standards" and that "there is no way this case could have been tried by the ordinary court since our law recognizes that offences arising from civil disturbances can only be tried by a Tribunal."

194. On 11 December 1995, the Permanent Mission of the Federal Republic of Nigeria to the United Nations Office at Geneva informed the Centre for Human Rights that it had transmitted to the relevant Nigerian authorities for necessary action the letter dated 4 December 1995 of the Special Rapporteur on the independence of judges and lawyers concerning the allegations with regard to the 21 Ogoni activists.

Observations

195. The Special Rapporteur is concerned that under the law establishing the Civil Disturbances Special Tribunal, there is no right of appeal. Nor is there provision for review by a body independent both of the Tribunal and of the State. The decisions of the Tribunal are effective only upon confirmation by the executive and cannot be challenged by the courts. This appears to be an attack on justice, which could facilitate other and broader human rights violations. The Special Rapporteur consequently calls on the Government of

Nigeria to ensure that the Special Disturbances Tribunal conforms to the standards of proceedings for fair trial as contained in the relevant international instruments or to abolish the Tribunal altogether.

196. Furthermore, the Special Rapporteur is deeply concerned about the long delay by the Government of Nigeria in responding to a letter of the Special Rapporteur dated 21 November 1995 seeking permission from the Government to undertake a joint mission with the Special Rapporteur on extrajudicial, summary or arbitrary executions during which they can investigate and report on the state of the independence of judges and lawyers in the light of recent events and in view of the concern expressed by the international community over the rule of law and human rights situation in Nigeria. In this regard, the Special Rapporteur urges Nigeria to respond promptly and positively to his request to undertake an investigatory mission to Nigeria.

Pakistan

197. The Special Rapporteur has been receiving information by way of memoranda and clippings of media reports alleging erosion of judicial independence in Pakistan and threats to the independence of its lawyers.

198. The thrust of the allegations are over supersession in the appointment of the Chief Justice and the appointment of ad hoc judges in place of permanent judges to the Supreme Court. Under article 182 of the Constitution of Pakistan ad hoc judges are appointed in specific circumstances, primarily as a temporary measure. These appointments caused considerable controversy in the independent media and the Bar Associations were vocal in their protests.

199. In a related development a senior advocate of the Supreme Court Bar Association, Mr. Mohammed Akram Sheik, a vocal critic of these appointments, was charged with contempt of court in June 1995 over public statements he made regarding a judgement of the Supreme Court where four of the seven judges who decided that case were ad hoc judges. He questioned, inter alia, whether the Supreme Court was properly constituted with respect to the provisions of the Constitution.

200. Concern was also expressed that the contempt charge would be heard before a panel of ad hoc judges in the Supreme Court. No hearing date has been fixed.

201. At the time of writing it was learned that the constitutionality of the appointment of ad hoc judges is currently being heard by a full bench of five Supreme Court judges.

202. In another development the Special Rapporteur received the alarming information on the attempted assassination of Asma Jahangir and Hina Gilani on 19 October 1995 at their respective homes. It was suspected that the attackers were religious fanatics and that their actions were reprisals for the two courageous human rights lawyers having successfully defended two persons accused of blasphemy, a case which aroused considerable public interest and unrest. The Special Rapporteur communicated directly and personally with Asma Jahangir who assured him that she and her family,

together with Hina Gilani and family, were given adequate protection by the Government. The attempted assassinations were condemned by all quarters, Government, opposition and the media.

203. The Special Rapporteur has also been receiving information of lack of unity within Bar Associations in Pakistan. It appears to the Special Rapporteur that this lack of unity could have resulted from politicization within the Bar Associations which, if true, could seriously undermine the independence of the profession.

204. The Special Rapporteur has sought to lead a mission to Pakistan and to this end has had discussions with the representative of the Permanent Mission of Pakistan in Geneva. The Special Rapporteur is awaiting a positive response from the Government of Pakistan.

Peru

Information transmitted to the Government

205. On 25 July 1995 the Special Rapporteur transmitted to the Government two urgent appeals concerning information he had received on the cases of Judge Antonia Saquicuray Sánchez and human rights lawyer Tito Guido Gallegos. According to the information received, on 16 June 1995 Judge Saquicuray began receiving death threats by phone after she made a statement concerning the promulgation on 15 June 1995 of the Amnesty Law by the executive. Mrs. Saquicuray had stated that the Law was not applicable to the investigations being carried out into the massacre at Barrios Altos which had occurred in November 1991. In the case of Mr. Guido Gallegos, the source reported that he began receiving death threats on 23 June 1995 in relation to his legal activities in opposition to the Amnesty Law.

206. On 1 August 1995 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture, and the Chairman of the Working Group on Enforced or Involuntary Disappearances concerning the promulgation of Amnesty Laws 26479 of 15 June 1995 and 26492 of 2 July 1995. The first of these laws grants general amnesty to military, police or civilian officials for acts derived from or committed in connection with or as a result of the fight against terrorism since May 1980. According to the information received, and in application of the amnesty laws, members of the armed forces who were on trial for violations of human rights might have been released. The second of the laws declares that the amnesty granted is non-justiciable and would not constitute a violation of the Constitution nor of the country's international obligations.

207. On 24 November 1995, the Special Rapporteur sent an urgent appeal to the Government concerning the case of Dr. Margarita Chuquiuru Silva, a lawyer who was allegedly detained on 28 February 1994 on charges of terrorism. She was tried according to the procedure established in articles 13 to 18 of Decree 2475 of 1992. In accordance with this decree, the trial was private (art. 13 f); there was no procedure for challenging the judges (art. 13 h); the identity of the judges was secret; the judicial decisions did not carry a signature or a seal and the judges were not able to be identified visually or

orally by the defence lawyer or by the defendant (arts. 15 and 16). She was found guilty and sentenced to 20 years' imprisonment. According to the source, there was no evidence to prove her guilt except for the testimony of an informer who was unable to explain where he had met Dr. Chuquiuru or his relationship with her. According to the source, this case was part of a systematic and general policy in Peru of persecution and harassment of defence lawyers who represent individuals accused of terrorism.

208. On 11 December 1995, the Special Rapporteur sent an urgent appeal to the Government concerning an allegation dealing with the death threats received by human rights lawyers of the Association for Human Rights, which is a member of the National Coordination for Human Rights. According to the information received, a woman delivered by hand a funeral floral arrangement in the shape of a cross to the offices of the Association for Human Rights. Attached to this floral arrangement was a funeral note that listed the names of people still alive. Several of the listed people were human rights lawyers. This funeral note was signed by a group called COLINA which, according to the information received, was a paramilitary group involved in various human rights violations in Peru, including the massacres in Barrios Altos and La Cantuta.

209. On 3 January 1996 the Special Rapporteur sent an urgent appeal to the Government concerning information he had received on the case of an American citizen, Ms. Lori Berenson, who was arrested by the Peruvian police on 30 November 1995 for alleged participation in acts of terrorism. The source indicated that she was to be formally accused by a tribunal composed of "faceless" judges. On 12 January 1996 the Special Rapporteur learned that Ms. Berenson had been tried by a "faceless" military tribunal, found guilty of treason and sentenced to life imprisonment.

Information transmitted by the Government

210. On 1 May 1995, the Government submitted to the Special Rapporteur information concerning changes made to the internal legislation on terrorism. The Government had issued Law No. 26447 which revoked article 15 of Decree Law No. 25475 which established the use of "faceless" judges: part of the national pacification process. The Government emphasized that article 2 of Law No. 26447 provides for the presence of the defence attorney from the beginning of the intervention by the police.

211. On 21 August 1995, the Government replied to the joint urgent appeal concerning the amnesty laws. The laws were enacted by Congress on the basis of article 102, paragraph 6, and article 139, paragraph 13, of the Peruvian Constitution, which give Congress the power to grant amnesty. Article 55 of the Constitution stipulates that international treaties concluded by Peru are part of national law and are therefore subject to the constitutional regime, as are all the country's laws. Thus, not only did the constitutional power of Congress to grant amnesty not contradict the relevant treaties, but those treaties do not expressly prohibit the implementation of articles 102 and 139 of the Constitution.

212. On 8 December 1995, the Special Rapporteur received a reply from the Peruvian Government to his communication of 25 July 1995 concerning the cases

of Antonia Saquicuray Sánchez and Tito Guido Gallegos. With regard to Ms. Saquicuray, the investigations had not yet yielded any results. With regard to Mr. Guido Gallegos, the letter stated that the prosecutor's office in Puno had arranged for the investigations concerning the death threats he had received from paramilitary groups and that the police headquarters of the region had provided protection for Mr. Guido Gallegos.

213. In the light of the mission being sought to the country, the Special Rapporteur will address the situation in Peru in greater detail at a later date.

Singapore

214. Allegations of lack of independence and impartiality of the judiciary were vehemently denied by the executive branch of the Government. During a special debate in Parliament in early November 1995, the Singapore Government, and in particular senior minister Lee Kwan Yew, came out in strong defence of the independence of the judiciary as an institution and the integrity of its individual judges and, in particular, the Chief Justice.

215. Singapore's judges today receive the highest salaries in the world. This island republic prides itself on an efficient judicial administration where cases, both criminal and civil, are disposed of speedily under strict case management control.

216. In another development the Attorney General of Singapore, in a speech delivered at a seminar on professional practice and responsibility in November 1995, inquired of the Law Society of Singapore why it failed to defend Singapore's legal system and judiciary when it was attacked by the foreign press.

217. The Special Rapporteur has not had a response from the Law Society. Neither has the Special Rapporteur received the Hansard record of the earlier parliamentary proceedings.

218. The Special Rapporteur observes that the allegations concerning the independence and impartiality of the judiciary could have stemmed from the very high number of cases won by the Government or members of the ruling party in either contempt of court proceedings or defamation suits brought against critics of the Government, be they individuals or the media. In the recent contempt of court charges brought against the International Herald Tribune and others, the Attorney General adduced evidence to show that over a period of time defamation suits brought against 11 opposition politicians by members of the ruling party all succeeded before the courts.

Sudan

Information transmitted to the Government

219. On 28 September 1995, the Special Rapporteur sent an urgent appeal to the Government citing information he had received concerning the arrest of three prominent lawyers in Khartoum. According to the information, Mustapha Abdel Gadir and Mohamed Ali al-Saydi were arrested in Khartoum on

12 September 1995. The source alleged that the men had been detained without charge or trial by the security forces in Kober prison in Khartoum. The source also reported that Bushra Abdel Karim is believed to have been arrested at the same time. The source claims that the men had been arrested because of the leading role they played in defending opponents of the Government who had been brought before the courts on criminal charges. To date there has been no response from the Government of the Sudan.

Tunisia

Information transmitted to the Government

220. On 23 December 1994 the Special Rapporteur sent a communication to the Government concerning information he had received on a seminar on the independent judiciary and its functions in Tunisia held in Tunisia from 14 to 24 of November 1994. According to this information, the publication of the minutes of the seminar allegedly were modified following pressure on the participants exerted by the Ministry of Justice. It was further alleged that the participants were individually summoned to the Centre for Legal and Juridical Studies of the Ministry of Justice where they were asked to sign a letter to withdraw the original document.

Information transmitted by the Government

221. On 6 October 1995 the Special Rapporteur received a reply from the Government to his communication, in which it acknowledged that the seminar had been held, for 23 Tunisian judges, within the framework of a programme organized jointly by the Centre for Legal and Juridical Studies of the Ministry of Justice and the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists, in cooperation with the Arab Institute for Human Rights, the High Institute of Judges, the Tunisian Association for Penal Law and the Tunisian Organization for Education and the Family. The Government stated that the independence of the judiciary is enshrined in the Tunisian Constitution which, in article 65, stipulates that "in the exercise of their functions, judges are subjected only to the authority of the law". In addition, the Government pointed out that judges have an association which ensures that they are independent and defends their moral and material interests.

222. The Government stated that contrary to the allegation received by the Special Rapporteur, the participants were not summoned to the Centre for Legal and Juridical Studies and that the summary records of the seminar were not modified following pressure which was reportedly exercised. In fact, after the conclusion of the seminar, the participants realized that the document entitled "Summary of the Activities of the Courses", which had been distributed during the hours just before the closing of the training session without them having had time to examine its contents, did not fully reflect the contents of the debate. Therefore, they decided to hold a meeting at the Centre, the venue where they usually met, in order to discuss the matter and to adopt a common position regarding the document. At the end of their meeting, they issued a document reflecting the totality of the views expressed.

223. Furthermore, the Government indicated that it would appear that contacts subsequent to the holding of the seminar had been undertaken between the organizers of the seminar and the secretariat of the International Commission of Jurists, which would be in a position to clarify the situation.

224. Pursuant to the recommendation from the Government to seek clarification from the International Commission of Jurists, the Special Rapporteur takes note of a press release issued by the ICJ on 9 December 1994, in which the ICJ and its Centre for the Independence of Judges and Lawyers stated that the Ministry of Justice had pressured participating judges to sign a new document significantly different in content from the document entitled "Summary of the Activities of the Course", which was a collection of reports drafted by participants during the seminar. Accordingly, the Special Rapporteur calls upon the Government of Tunisia to take the necessary measures to remedy this situation.

United Kingdom of Great Britain and Northern Ireland

England and Wales

225. In paragraph 56 of his first report to this Commission, the Special Rapporteur alluded to the need for clarification with regard to the function of judicial review, or its equivalent, of the constitutionality or legality of executive decisions, administrative orders and legislative acts. The Special Rapporteur observed that there were considerable misunderstandings on the part of governmental authorities and even parliamentarians over this power of the courts.

226. The Special Rapporteur notes with grave concern recent media reports in the United Kingdom of comments by ministers and/or highly placed government personalities on recent decisions of the courts on judicial review of administrative decisions of the Home Secretary. The Chairman of the House of Commons Home Affairs Select Committee was reported to have warned that if the judges did not exercise self-restraint, "it is inevitable that we shall statutorily have to restrict judicial review". The controversy continued and reportedly prompted the former Master of the Rolls, Lord Donaldson, who was said to have accused the Government of launching a concerted attack on the independence of judiciary, to have said, "any government which seeks to make itself immune to an independent review of whether its actions are lawful or unlawful is potentially despotic".

227. The Special Rapporteur will be monitoring developments in the United Kingdom concerning this controversy. That such a controversy could arise over this very issue in a country which cradled the common law and judicial independence is hard to believe.

Northern Ireland

228. According to the information received on the situation in Northern Ireland, visits between lawyers and their clients in prison were normally conducted under "open" conditions, i.e. in a room with the door

closed but which was open to the view of the prison officers who could see everything that occurred but were unable to hear what transpired between the lawyers and their clients. Reportedly, the Government has initiated a new policy whereby certain prisoners who have been designated as being "exceptional high risks" have had special arrangements imposed upon visits by their lawyers and their families. There were about 15 prisoners, 8 of them Irish, affected by the policy.

229. Under the new policy, all persons visiting "exceptional high risk" prisoners, including defence lawyers, are subjected to stringent searches. In one reported incident, a prisoner was strip-searched both before and after the lawyer's visit, even though no physical contact between the prisoner and the lawyer had been possible. It is also alleged that the authorities fail to respect lawyer-client confidentiality where such prisoners are concerned.

230. It is alleged that the implementation of the new policy hampers the unfettered access by prisoners to legal advice.

231. It was further alleged that with the cessation of political violence in Northern Ireland, there was no justification for the United Kingdom Government's continuing derogation from article 14 of the International Covenant on Civil and Political Rights.

232. It was also alleged that the present situation in Northern Ireland did not justify the adoption of emergency laws.

233. With regard to the right to private legal consultation for detainees, it was alleged that the present practice in Northern Ireland contravened article 14.3 (b) of the ICCPR and the United Nations Basic Principles on the Role of Lawyers.

234. During his visit to Northern Ireland, which is referred to above in paragraph 13, the Special Rapporteur was informed that the number of arrests under emergency laws in Northern Ireland had decreased dramatically since the ceasefire of 1994. The source also reported that the abuse of solicitors by certain police officers in Castlereagh Holding Centre had also diminished, but only because fewer arrests had provided fewer opportunities to be abusive.

235. When people were detained at Castlereagh, it was reported that some police officers of the Criminal Investigation Division (CID) continued to question the professional integrity of their solicitors and to assume that the solicitors were in sympathy with their client's affiliations and causes. Death threats were still made against solicitors on occasion, and reference in very derogatory terms was still made to the murdered lawyer Patrick Finucane.

236. On 11 January 1996, the United Kingdom Government extended the Northern Ireland (Emergency Provisions) Act for a further two years. Under this legislation suspects could be denied access to their lawyers for periods up to 48 hours and could always be interviewed in the absence of their lawyers. In such conditions, it was alleged that police abuse of solicitors could continue completely unchecked.

237. The Government did announce one minor reform, which was that silent video recordings would be made of police interrogations. While this might help to safeguard against actual physical abuse, the absence of sound recording could not inhibit verbal abuse of both suspects and their lawyers.

238. In August 1995, as a result of reports made available to him, the Special Rapporteur requested a leading British lawyer to observe the proceedings in an application for judicial review of certain prison rules introduced by the Home Secretary. These rules were in connection with meetings in prison with the prisoners designated as high risk. These rules also applied to lawyers interviewing remand prisoners in such prisons. The allegation made to the Special Rapporteur was that implementation of these rules would affect confidentiality of communication between solicitor and client in violation of paragraph 8 of the Basic Principles on the Role of Lawyers.

239. The High Court composed of two judges heard the application and on the facts dismissed the same application. The Special Rapporteur has been told that the applicants have appealed to the Court of Appeal.

240. The Special Rapporteur is continuing to monitor developments in Northern Ireland and in that connection appreciates the cooperation extended to him by the British Irish Rights Watch and the Lawyers Committee for Human Rights in New York.

Uzbekistan

Information transmitted to the Government

241. On 29 December 1995 the Special Rapporteur sent a joint appeal with the Special Rapporteurs on extrajudicial, summary or arbitrary executions, and on the question of torture on behalf of a group of citizens of the Republic of Korea, Un Dmitry, Lee Vladimir, Arutyunov Vitaly, and Tsoi Valery, who were convicted of the crime of murder by the Samakand Regional Court. According to the source, Mr. Un Dmitry had been sentenced to death, while the other three defendants had been sentenced to 12 years' imprisonment.

242. According to the source, it was alleged that all four defendants were kept in cells without sanction of the prosecutor for more than 10 days, in violation of Uzbek law, and that all were badly beaten to force a confession. It was further alleged that the criminal case against the defendants contained false documents, including forged signatures of witnesses and lawyers, and faked protocols of interrogations. Further, it was alleged that the investigator had denied the defendants the minimum guarantees of a fair trial, including the right to have legal counsel of one's own choosing and the right to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, leading to the suspicion that the Court was not independent. It was also alleged that there was collusion between the procurator and the trial court. To date the there has been no response from the Government.

Yemen

Information transmitted to the Government

243. On 20 October 1995 the Special Rapporteur advised the Government that he had received information concerning advocate Abdel Aziz Ahmed El-Samawi, the Secretary-General of the Yemen Bar Association. According to the source, Mr. El-Samawi was attacked and beaten while in court defending a case in the city of Sana'a. The source also reported that he was subsequently accused of apostasy. To date there has been no response from the Government of Yemen.

Zaire

Information transmitted to the Government

244. The Special Rapporteur transmitted a communication to the Government on 27 October 1995 concerning information he had received of an incident which had occurred in Haut-Zaire on 20 July 1995. According to the source, Mr. Lombeya Bosongo, Governor of Haut-Zaire, had made numerous verbal attacks against the magistrates of the Baluba tribe, which culminated in a violent demonstration on 20 July 1995. During the course of this demonstration, organized by Governor Lombeya, the building of the tribunal de paix of Makiso and the Court of Appeal were destroyed. Many judicial documents were also destroyed and the robes of the judges were burned. Also, the home of Judge Kabamba Mbikayi of the Court of Appeal was ransacked during the demonstrations. The source reported that no action had been taken against the demonstrators. A commission of inquiry has been established, but its composition had not been made public nor had it commenced its work. To date there has been no response from the Government.

VI. CONCLUSIONS AND RECOMMENDATIONS

245. The attacks on the independence of judges and lawyers remain a serious concern; none the less, the Special Rapporteur is pleased to observe that there is today a greater awareness of the importance of judicial independence for the maintenance of the rule of law and the protection of human rights, not just civil and political rights but economic, social and cultural rights as well. The Special Rapporteur views this as a positive development which should be encouraged. In that regard, a report from Morocco states that, "reflecting a growing emphasis on economic development ... experts say the focus of debates has shifted from looking at ways to ensure the independence of the judiciary to examining how the rule of law can be used as a tool to provide a stable environment for investment."

246. The threat to judicial independence comes not just from the executive arm of the Government nor from the legislature, but from organized crime, powerful businessmen, corporate giants and multinationals. The conduct of some within the judiciary and the legal profession can threaten their own or each other's independence. Hence the need for constant vigilance both within and without.

247. The newly emerging democracies need particular attention. With meagre resources, both financial and human, it would be wrong to impose the high standards expected of the more developed nations. They need to be advised and

made aware of those standards and the need to achieve them, yet as an immediate measure they need the basics. In some of these democracies unqualified people are appointed to high judicial posts because of the lack of trained human resources. Training programmes must therefore be structured to meet these needs.

248. Without duplicating efforts by other NGOs involved in trial observation programmes, the Special Rapporteur intends to observe certain specific trials of particular interest to his mandate, either personally or through a representative appointed by him. From his personal experience the Special Rapporteur appreciates the importance of such a presence at trials, especially when there are suspicions that such trials may not be fair for the reason that the tribunal may not be independent and impartial and/or that the independence of the defence lawyers may be undermined.

249. The Special Rapporteur is conscious of the monumental tasks ahead in the realization of his mandate. He seeks the cooperation of NGOs and other organizations to provide him with timely information on any attacks on the independence of judges and lawyers in their respective countries or neighbouring countries due to the fact that the Special Rapporteur has no monitoring mechanism to gather such information.

250. In his first report the Special Rapporteur made particular reference to resource requirements. Resources still remain inadequate and with the increased financial crisis faced by the United Nations in general and the Centre for Human Rights in particular any such further requests may be inappropriate.

251. The Special Rapporteur calls upon all Governments to respond to his interventions promptly and in cases where missions are sought, the Special Rapporteur again calls on the Governments concerned to respond without delay so as to enable him to organize his schedule in advance for the year.

Appendix

1. The Special Rapporteur wishes to thank the replies submitted by the following Governments to his initial communication dated 16 December 1994: Armenia; Austria; Belarus; Cameroon; Canada; Colombia; Cuba; Cyprus; Chile; Egypt; Estonia; Ethiopia; Georgia; Germany; Iraq; Japan; Jordan; Kuwait; Libyan Arab Jamahiriya; Liechtenstein; Luxembourg; Malta; Mauritius; Mexico; Morocco; Namibia; New Zealand; Poland; Saudi Arabia; Senegal; Slovakia; Syrian Arab Republic; Sweden; Sri Lanka; Tunisia; Turkey.

2. The Special Rapporteur wishes to thank the following courts and judges for their replies to his initial communication dated 16 December 1994: The Honourable Justice Robin Millhouse of the Australian Section of International Association of Judges; The Honourable Justice Michael Kirby AC CMG, President of the Court of Appeal, Supreme Court of Sydney; the Chief Justice of the High Court of Australia, Sir A.F. Mason; the Chief Justice of the Supreme Court of the Bahamas, Honourable Mr. Justice J.C. Gonsalves-Sabola; the Union internationale des magistrates, Section belge; the Chief Justice of Grand Cayman Islands, Honourable G.E. Harre; the Superior Court of Québec, the Honourable Lawrence A. Poitras, Chief Justice; the Tax Court of Canada, Office of the Chief Justice; Federal Court of Canada, the Rt. Hon. Antonio Lamer, Chief Justice of Canada; Canadian Judicial Council, Ms. Jeannie Thomas, Executive Director; the Danish Association of Judges, Mr. Bjarne Pederson; the Supreme Court of Finland; Bundesverfassungsgericht (Constitutional Court of Germany), Der Direktor, Dr. Karl-Georg; the Supreme Court of Ghana; the Chief Justice of Hong Kong, Director of Administration, Mr. R.J.F. Hoare; Chief Justice of the Supreme Court of Hong Kong, the Honorable Sir Ti Liang Yang; Justice M.K.N. Goyal of India; Constitutional Court of Italy, Secretary General, Mr. Cesare Bronzini; Bailiff's Chambers, Royal Court House, Sir Graham Dorey, Bailiff of Guernsey; Constitutional Court of Lithuania, Chairman, Mr. Jouzas Žilys; Supreme Court of Mongolia, Chief Justice D. Dembereltseren; Supreme Court of Netherlands, Chief Justice Sjoerd Royer; Netherlands Association for the Judiciary; Chief Justice of New Zealand, Sir Thomas Eichelbaum; Conseil constitutionnel du Sénégal, President Youssoupha Ndiaye; le Médiateur de la République du Sénégal, M. Ousmane Camara; Supreme Court of Singapore; Constitutional Court of Slovenia; the Association of Slovak Judges, Judge and Executive Manager, Dr. Annamária Katarína Brunovská; High Court of Solomon Islands, Chief Justice John Muria; Supreme Court of Sweden, Chief Justice Anders Knutsson; Supreme Administrative Court of Sweden, President G. Wahlgren; Supreme Court of Uruguay, President Dr. Raúl Alonso de Marco; the Royal Court of Justice of the United Kingdom, The Honourable Mr. Justice Phillips; the Bailiff's Chambers Royal Court House, Jersey, Sir Peter Crill, C.B.E.; the Commonwealth Secretariat, Legal and Consultation Affairs Division, Director R.H.F. Austin; The Lord President, Parliament House, Edinburgh; the Chief Justice of Zambia; the Chief Justice of Zimbabwe, The Honourable Mr. Justice A.R. Gubbay; the Lord Chief Justice of England and Wales, Lord Taylor.

3. The Special Rapporteur wishes to thank the following Ombudsmen who replied to his initial communication dated 16 December 1994: the Acting Ombudsman of Victoria, Australia, B.W. Perry; the Ombudsman for the Northern Territory of Australia, Acting Ombudsman, T.J. Galloway; Ombudsman for the Legislative Assembly, Province of British Columbia, Canada, Dulcie McCallum;

the Danish Ombudsman, Hans Gammeltoft-Hansen; the Parliamentary Ombudsman of Finland, Mr. Jacob Söderman; Office of the Ombudsman of Guyana, S.Y.Mohamed; the National Ombudsman of the Netherlands, Marten Oosting; the Parliamentary Ombudsman of Norway, Mr. Arne Fliflet; the Investigator General (the Ombudsman Institution of Zambia), Justice F.N. Mumba; the Secretary for Justice, Legal and Parliamentary Affairs, Ombudsman of Zimbabwe, Mrs. B. Chanetsa.

4. The Special Rapporteur wishes to thank the following universities for replying to his initial communication dated 16 December 1994: Faculty of Law, University of Chittagong, Bangladesh, Dr. M. Shah Alam, Dean; Faculty of Law, University of the West Indies, Barbados, Dr. Albert K. Fiadjoe, Dean; Faculty of Law, University of Botswana, Bojosi Otlhogile, Dean; Department of Law, Carleton University, Professor T. Brettel Dawson, Chair; Faculty of Law, University of Ottawa, Sanda Rodgers, Dean; Institute of Legal Science, University of Copenhagen, Eva Smith, Professor of Law; University of Hong Kong, Department of Law; Faculty of Law, Kurukshetra University, India, Mr. S.K. Singh, Dean; Faculty of Law, University of Delhi, Mr. M.P. Singh; Faculty of Law, University of Auckland, New Zealand, Professor Julie Maxton, Deputy Dean; Faculty of Advocates of Scotland, Andrew R. Hardie, Q.C., Dean; Faculty of Law, University of Dar es Salaam, Z.S. Gondwe, Dean; Council of Legal Education of Trinidad, Hugh Wooding Law School, Austin L. Davis, Principal; Faculty of Law, University of Birmingham, Mr. Jeremy McBride; Cambridge University, on behalf of the Chairman of the Faculty Board of Law, Sir Derek Oulton, O.C., Ph. D.

5. The Special Rapporteur wishes to thank the following Bar Associations that have replied to his initial communication dated 16 December 1994: Finnish Bar Association, Pirkko Kivikari, Deputy Secretary; the Bar Association of India, Lalit Bhasin, General Secretary; American Bar Association, Virginia M. Russel, Director.

6. The Special Rapporteur wishes to thank the following associations of lawyers that have replied to his initial communication dated 16 December 1994: International Association of Young Lawyers, Stefano Dindo-Cinti, National Vice-President for Italy; New Zealand Law Society, Austin Forbes, President; National Lawyers Association of Tunisia, Abdelwaheb El Behi, Bâtonnier; Law Society of Zimbabwe, W. Mapombere, Executive Director; Law Council of Australia, National Council of Lawyers, B.S. Virtue, Deputy Secretary-General.

7. The Special Rapporteur wishes to thank the following NGOs which have been assisting with his mandate: Amnesty International; Arab Lawyers Union; Arab Organization for Human Rights; Article XIX: International Centre Against Censorship; Asociación para la Promoción Social Alternativa; Asociación Pro Derechos Humanos; Asociación Pro Derechos Humanos España; Bar Human Rights Committee of England and Wales; British Irish Rights Watch; Canadian Human Rights Commission; Centre for the Independence of Judges and Lawyers; Citizens' Network; Commonwealth Secretariat; Comisión Andina de Juristas; Comisión Andina de Juristas, Seccional Colombiana; Comisión para la Defensa de los Derechos Humanos en Centroamérica; Coordinadora Nacional de Derechos Humanos; Egyptian Organization for Human Rights; Fondation pour le respect des lois et des libertes; Human Rights Watch Helsinki; Human Rights Watch/Asia; Human Rights in China; Inter-Church Committee on Human Rights in Latin America; International Association Against Torture; International

Commission of Jurists; International Federation of Human Rights; International Law Group; Kashimir American Council; Lawyers Committee for Human Rights; Minority Rights Group International; National Society for Human Rights, Republic of Namibia; Pat Finucane Centre - Towards Human Rights and Social Change; Peace Brigades International; Physicians for Human Rights; Tibet Bureau, Human Rights Desk, Department of Information and International Relations.

8. The Special Rapporteur also wishes to thank the Carter Center, Atlanta, Georgia, and the Center for Civil and Human Rights of Notre Dame University, Indiana, United States of America, for having provided law clerks to assist him.